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131

# BUYING AND SELLING AIRPORT OPERATING RIGHTS

ORIGINAL

## HEARING

BEFORE THE

SUBCOMMITTEE ON AVIATION

OF THE

## COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION UNITED STATES SENATE

NINETY-NINTH CONGRESS

SECOND SESSION

ON

## S. 1966

TO PROVIDE FOR EFFICIENT AND EQUITABLE USE OF OPERATING RIGHTS AT CONGESTED AIRPORTS, AND FOR OTHER PURPOSES

FEBRUARY 6, 1986

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Committee on Commerce, Science, and Transportation

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# BUYING AND SELLING AIRPORT OPERATING RIGHTS

THURSDAY, FEBRUARY 6, 1986

U.S. SENATE,
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION,
SUBCOMMITTEE ON AVIATION,
*Washington, D.C.*

The subcommittee met, pursuant to notice, at 9:33 o'clock, a.m., in Room SR-253, Russell Senate Office Building, Hon. Nancy Kassebaum (Chairman of the subcommittee) presiding.

Staff members assigned to this hearing: Stephen Johnson, staff counsel; and Steve Palmer, minority professional staff member.

## OPENING STATEMENT BY SENATOR KASSEBAUM

Senator KASSEBAUM. The hearing will please come to order.

The purpose of today's hearing is to examine the problem of insufficient operating capacity at the nation's four high-density airports, the remedy proposed by DOT, and the pros and cons regarding that remedy.

The Department of Transportation has issued a rule permitting carriers to buy and sell slots at the airports. I have serious reservations about that particular remedy.

I don't think buying and selling slots is good public policy or good transportation policy.

There are 4,200 total slots at the four airports. It is my understanding that Prudential-Bache has done an estimate that the value of each slot is somewhere between $750,000 and $1 million. Using the higher figure, which we tend to do when it suits our case, this means that these public assets are worth $4.2 billion.

Why, when the Department is proposing to sell Conrail and National and Dulles Airports is it proposing to give away a $4.2 billion asset?

I am also concerned really not just the loss of public assets, and the resulting windfall that would appear to accrue to the air carriers, but I am concerned with what buy/sell will do to community air service, to the legitimate rights of general aviation, and to commuter carriers at the high density airports.

DOT's recently issued rule appears to be permanent. There is no provision for going back if this rule takes effect and proves to be unworkable.

The 23 Senators to date who have given their support to S. 1966 are greatly interested in the testimony which we will hear today.

We believe that there is a better plan, and it will not be easy to persuade us that we are wrong.

Many of us are open to trying to find different avenues and a better plan, and we are willing to consider what those might be.

There are a number of witnesses who will be testifying this morning. I think the arguments are fairly familiar to everyone involved, and I would hope that everyone will confine his statement to a limited amount of time so that we will have ample time for questioning.

Senator Ford, do you have any opening statement?

## OPENING STATEMENT BY SENATOR FORD

Senator FORD. Just a comment, Madam Chairman.

I thank you for what you are doing today.

I think there is something deeper here than just selling slots. There is a philosophy to sell everything—sell the railroads, sell the airports, sell the slots, sell the land between the lakes, sell Bonneville. We found members of the administration that are resigning because of the philosophy, particularly over Bonneville and the making of money.

There is more here than just the selling of slots, I think. I know we must limit our questioning today and the testimony to just the selling of slots, but I think we need to look somewhat deeper as we see the erosion for short-term gain and long-term losses.

Senator KASSEBAUM. It's been irreverently suggested that maybe Walt Disney Productions would buy the House and Senate.

Senator FORD. Well, I have, for a long time, referred to this place as "Disneyland East."

Senator Hollings has an opening statement he would like to have included in the record.

[The statement and bill follows:]

## OPENING STATEMENT BY SENATOR HOLLINGS

Madam Chairman, the legislation before us today is good public policy and I commend you for taking the steps to introduce it. I am pleased that we are meeting to discuss this matter early in the Session, because we must act quickly to cut off DOT's so-called Buy/Sell Rule before it takes effect.

Right to the point, this government should not be giving away public property rights to private entities, and then exclusively allowing them any profit that may be gained from those rights. This is no way to improve upon our air transportation system.

In the effort to privatize everything the Federal government administers and achieve a market-based economy, Secretary Dole has gone too far.

I realize that this idea is consistent with President Reagan's budget for the coming fiscal year—but in every other instance there is at least an attempt to gain something in return for those assets. This is merely a give-away!

Still—let me not stray from my point—I find the idea of airlines buying and selling airport slots highly objectionable. I am convinced that this rule would be extremely damaging to small and medium-sized communities. If put into place, small market, short-haul flight slots would very quickly be sold to carriers with longer haul, high density markets. This was proven in 1982, when a buy/sell experiment was attempted for six weeks.

It would also result in an increase of market consolidation and monopoly power. And it would effectively freeze out new entrants by mandating that even before they begin service to one of these four airports, they would have to pay a competitor what has been estimated by Wall Street analysts to be $1 million for a single slot!

I am at a loss as to how this possibly could be beneficial to airline passengers, and I intend to ask the Secretary today to enlighten me.

Finally, I am extremely disturbed and disappointed by the fact that this rule was released in direct defiance of a letter to Secretary Dole that I, and Senators Kassebaum, Exon, Ford, Rockefeller and Pressler sent in early December. We wrote the Secretary asking for time to thoroughly review the concept of buy/sell before she issued the final rule.

Yet, in less than two weeks, the rule had been published in the Federal Register—and there had been no attempt to contact me to discuss our request. Finally, the Secretary did respond, but her letter was dated a week after the rule had been made public.

As I said at the outset—allowing the buying and selling of airport slots is bad public policy. DOT's rule must be overturned. That is why I am a cosponsor of the Subcommittee Chairman's bill and will work for its passage.

Timing is the critical commodity on this issue. I intend to urge our Chairman to schedule an Executive Session on S. 1966 as soon as possible in order that we can keep the airlines from buying and selling airport slots.

We have less than seven weeks, and the clock is ticking.

Madam Chairman, I thank you for the opportunity to make this statement and again commend you for your leadership on this issue.

99TH CONGRESS
1ST SESSION

# S. 1966

To provide for efficient and equitable use of operating rights at congested airports, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

DECEMBER 17 (legislative day, DECEMBER 16), 1985

Mrs. KASSEBAUM (for herself, Mr. DANFORTH, Mr. HOLLINGS, Mr. EXON, Mr. FORD, Mr. ROCKEFELLER, Mr. KASTEN, Mr. GOLDWATER, Mr. PROXMIRE, Mr. METZENBAUM, Mr. ABDNOR, Mr. NUNN, Mr. SIMON, Mr. BURDICK, Mr. LAUTENBERG, and Mr. DECONCINI) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

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# A BILL

To provide for efficient and equitable use of operating rights at congested airports, and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the Secretary of Transportation and the Administrator of the Federal Aviation Administration shall—

(1) repeal any rule or regulation or rescind any order issued between December 1, 1985, and the date of enactment of this Act, and

(2) after the date of enactment of this Act, not promulgate any rule or regulation or issue any order, relating to high density traffic airports designated as subpart K of part 93 of title 14, Code of Federal Regulations (14 CFR 93.121 et seq.),

that is inconsistent with the provisions of this Act.

SEC. 2. Consistent with aviation safety, the Administrator of the Federal Aviation Administration shall, not later than one hundred and twenty days after the date of enactment of this Act, provide by rule or otherwise that any domestic air carrier or commuter air carrier operating right (depature or arrival) regulated at high density traffic airports in accordance with subpart K of part 93 of title 14, Code of Federal Regulations (14 CFR 93.121 et seq.), hereinafter referred to as "slot", which is substantially unused shall be recalled by the Administrator of the Federal Aviation Administration for reallocation pursuant to section 3 of this Act.

SEC. 3. (a) Consistent with aviation safety, the Administrator of the Federal Aviation Administration shall, not later than one hundred and twenty days after the date of enactment of this Act, provide by rule or otherwise for a mechanism for the allocation and reallocation of domestic slots in accordance with the provisions of this section.

(b) The allocation and reallocation of slots (other than on a lottery basis pursuant to subsection (d) of this section) shall be made by a separate air carrier or commuter air carrier Scheduling Committee established for each of such high density traffic airports. Each such Scheduling Committee shall be composed of a representative of each air carrier or commuter air carrier operating from such airport, and a representative of each air carrier or commuter air carrier that desires to commence air carrier operations from such airport within six months after the date of application for membership on such Scheduling Committee.

(c) The Scheduling Committee shall allocate and reallocate slots semiannually, unless the Scheduling Committee unanimously agrees on another allocation interval.

(d) If a Scheduling Committee is unable to reach unanimous agreement on the allocation of slots, the Secretary shall, on a lottery basis, allocate—

(1) all new slots, voluntarily returned slots, and unused slots; and

(2) a reasonable percentage of slots currently in use at such Airport.

The mechanism for such reallocation shall be adequate to ensure the opportunity for new entry, shall maintain essential air transportation (as defined in section 419 of the Federal Aviation Act of 1958 (49 App. U.S.C. 1389)), and shall protect the access rights of commuter carriers. In addition, the Administrator of the Federal Aviation Administration shall employ a method for the recall of slots currently in use that ensures that no carrier incurs the loss of an undue proportion of its slots currently in use.

SEC. 4. The Secretary of Transportation or the Administrator of the Federal Aviation Administration shall not, by rulemaking or otherwise, provide or permit the transfer of slots for consideration or in a manner inconsistent with this Act. In addition, the Secretary shall declare null and void any transfer of slots which occurred between December 1, 1985, and the date of enactment of this Act, if such transfer was for consideration or occurred in a manner inconsistent with this Act.

Senator KASSEBAUM. It's a great pleasure to welcome as our first witness James Burnley, Deputy Secretary, Department of Transportation. Mr. Burnley.

## STATEMENT OF JAMES BURNLEY, DEPUTY SECRETARY, DEPARTMENT OF TRANSPORTATION; ACCOMPANIED BY EDWARD P. FABERMAN, DEPUTY CHIEF COUNSEL, FEDERAL AVIATION ADMINISTRATION

Mr. BURNLEY. Thank you.

I appreciate this opportunity to appear before the subcommittee to explain why the consumer, the aviation industry, and affected communities will benefit, we believe, from our new approach to allocating the FAA slots at the nation's four high-density traffic airports: LaGuardia and JFK in New York, O'Hare in Chicago, and National here in Washington.

With me today is Deputy Chief Counsel Ed Faberman from the Federal Aviation Administration.

I will not go into an explanation of the evolution of the current slot allocation procedure. That is spelled out in detail in my full testimony, which has been submitted for the record.

Suffice it to say, however, that almost nobody is happy with the current system and that we do believe that we've come up with the best alternative solution to the very faulty and, at this point, almost totally broken current system.

Madam Chairman, I believe we are both committed to advancing the benefits of deregulation by encouraging real competition at these airports and cities, both among the carriers already there and by giving opportunities to new entrants.

At the same time, I think we would agree that we recognize a need to preserve opportunities for small community service, to meet our international obligations, and to consider the significant financial investments and other commitments that established carriers have already made at these airports.

The Department studied numerous allocation possibilities during the past several years, and we issued the proposed version of this rule in June of 1984, some 18 to 20 months ago.

The vast majority of the commentors on our proposed rule accepted the need for improvement, but they clearly differed in their suggestions as to an adequate remedy.

In addition to air carriers and commuters, we received comments from Federal agencies, State and local Government agencies, including airport operators, and from aviation-related organizations, industry groups and consumer groups.

Their comments and concerns were all carefully taken into account in making this decision and in developing the final rule. In addition, we thoroughly reviewed all—and I want to underscore all—the available options. We looked at deadlock breaking mechanisms with use-or-lose provisions. In the context of buy/sell, we considered a number of initial allocation procedures, including various auction, lottery, and formula allocation approaches.

From this extremely exhaustive process, we culled elements from a number of options and incorporated them into the final rule and proposal that we are here to discuss today.

The rule allows anyone to purchase a slot at any one of the four airports for any mutually agreeable consideration. The rule's overall effect will be to increase and encourage vigorous competition at both the high-density airports and in the larger metropolitan areas they serve.

The new entrants seeking access to new markets will have as much opportunity as any incumbent to acquire slots to enter those new markets. Incumbents as well as new entrants will gain the flexibility to buy or lease slots, to either increase operations at high density airports, or realign operations to respond to new opportunities to compete more efficiently.

Promoting efficient scheduling and routing will, of course, ultimately have benefit to the people we are most concerned about, the consumers of commercial aviation services.

I believe we have dealt sensibly and fairly with the fundamental concerns about the buy/sell rule.

First, we have taken precautions to assure that the interest of smaller communities, traditionally served from the high density airports, are recognized. We have maintained the existing number of commuter carrier slots, and we have a requirement that these slots be operated only with commuter aircraft, which will help assure service to small communities.

On the other hand, we allow air carrier slots to be used in commuter service, so there is a potential for some expansion of small community service.

In addition, the slots used to provide essential air service will be protected so long as that program continues.

The rules provide that EAS slots cannot be sold or otherwise transferred to another carrier except in one-for-one trades at the same airport unless the department's EAS office determines that there will be no harm to the EAS program.

Most important, the rule will permit communities concerned about maintaining service to purchase slots and lease them to carriers that agree to serve their communities.

Second, we have acknowledged the importance of our international obligations. Slots serving foreign points are not subject to buy/sell. Because international aviation is the subject of numerous bilateral and multilateral agreements, we have preserved our authority to allocate slots as needed to fulfill the terms of those agreements.

Third, while many airport operators have been critical of DOT's approach to this issue, the actual operators of the four high density airports where the rule will be in effect all support the buy/sell approach, because a carrier's ability to control the number of slots they operate will help to stabilize the airline tenancy arrangements at those airports.

Fourth, and most important, we have made every effort to make the transition from the current, very badly functioning system, to the new one as fair and nondisruptive as possible. For one thing, our rule creates an immediate use-or-lose requirement that will withdraw all "pocketed"slots for equitable reallocation on a lottery basis. That is an improvement, I know, that you support.

In addition, we have sought to avoid disruptions in service patterns and recognize the large investments of carriers in existing allocation patterns by grandfathering most of the slots held by incumbents at these four airports.

Some have raised the concern that it's unfair for incumbents to initially receive their slots for free. For a number of reasons, however, we believe our slot allocation rule will create little, if any, new windfall. Furthermore, any attempt to correct the alleged windfall in the manner proposed by S. 1966 would be unfair in our judgment and likely to be highly disruptive of airline service.

First, incumbent carriers at the high density airports are already enjoying the benefits of grandfathering, since they are now and have been using a limited resource for some time through the mechanism of the scheduling committees.

If a windfall exists, that's it. All the new rule does is allow that existing windfall, if that's what it is, to be sold.

As the Council of Economic Advisors stated in their comments on this rulemaking, that increase in value will be marginal because almost all of the value of a slot comes from the privilege of using it.

Furthermore, the existing system of allocation permits incumbents to trade slots among themselves today. The new rule simply adds the opportunity for those who do not now hold slots to join the previously closed circle of those who do.

Second, incumbent air carriers and commuters alike have expended huge sums of money building facilities, developing hubs, creating connections with other carriers, committing aircraft, training, and stationing crews, leasing gate space, and advertising and developing markets in the high density airport cities and in the cities served from those high density airports.

To periodically take away those slots, as proposed in S. 1966, would deprive these carriers of the benefits of these huge investments and would, thereby, we believe be extremely inequitable to small as well as large carriers.

With the threat of constant slot loss through a lottery allocation hanging over their heads, airlines may reduce such investments to the detriment of the travelling public.

I should also stress that air carriers and commuters of all sizes hold slots at these airports, and loss of these investments will hit the small operators the hardest.

Finally, periodically withdrawing slots and reallocating them by lottery as under S. 1966 does not cure the windfall potential but actually creates a windfall, by arbitrarily taking the scarce good from a carrier that has made a substantial investment in reliance on having the right to use that slot and giving it to another carrier which has made no such commitment.

Moreover, not only airlines, but also the cities they serve are beneficiaries of any current windfall, and their service would be placed at risk in any periodic withdrawal of slots in large numbers needed to conduct a lottery reallocation.

These communities may well ask why their service is likely to be lost in such an arbitrary fashion.

Let me briefly summarize our objections to the deadlock-breaking mechanism of S. 1966.

First, under the bill, the FAA becomes the arbiter of a "reasonable percentage" of slots needed to insure competition at each airport. This, we believe, is a virtual replay of the pre-1978 attempt to have the Government arbitrate airline competition. We do not want to make the FAA the next incarnation of the Civil Aeronautics Board.

Second, a lottery is not a satisfactory basis for making business decisions about entering any particular market. It would literally boil down to the "luck of the draw"whether a particular service could begin. In fact, you may recall this was a very problem which caused such dissatisfaction when a lottery was used briefly after the PATCO strike, and the solution that was adopted a few months after that lottery mechanism was to put into place a form of buy/sell.

Third, incumbents would still have little, and perhaps reduced, flexibility to increase operations or adjust schedules at high density airports in order to respond to competitive opportunities and needs.

Fourth, communities other than those with protected EAS service under S. 1966 would stand to lose their flights in the luck of the draw. I ask you to consider for a moment what service is more susceptible to loss under a period withdrawal mechanism? It could very well be the service we are all trying to preserve—service to the mid-sized communities at convenient hours that often do not produce the best load factors.

Fifth, and most important, the S. 1966 process will end in the ultimate deadlock, when all incumbents have been ground down to the point where further loss would constitute what the bill calls an "undue proportion of loss." We would not only be deadlocked, but the mechanism used would cause a highly arbitrary and economically inefficient redistribution of slots along the way.

The buy/sell rule is a result of years of study by the department in consultation with those affected by the rule. With buy/sell, we have taken an intolerable situation and attempted to create a workable and equitable solution within existing limitations. It approximates as closely as possible the public benefits of barrier-free entering into competition, and, we believe, does so in a responsible manner.

The rule will benefit carriers and travellers alike.

As you pointed out in your letter to the Secretary of December 3, 1985, the uncertainty has already gone on much too long. We believe it's time to give the buy/sell approach a fair opportunity to work.

That completes my formal statement and I would be happy to answer any questions.

Senator KASSEBAUM. Thank you very much, Mr. Burnley. I very much appreciate your thoughtful observations. I know you have given a lot of thought to this.

I have visited with you in respect to the thinking that has gone into this.

I would like to ask, in your evaluation, which I assume has been extensive, considering various approaches, what did you come up with as far as an analysis of why the deadlock-breaking mechanisms have not worked? Why have the scheduling committees been deadlocked, so to speak, and simply taken no action over the last couple of years?

Mr. BURNLEY. Senator, I think the answer to that has several layers.

The first, and perhaps most important, drawback of the current system is that when you ask a group of people who have control already of scarce and valuable economic opportunities to sit down and agree to give some of those opportunities up to others who wish to come in and provide competition, perhaps direct competition with one of the existing operators, you ask folks who, in the free enterprise system are trying to maximize their profits, to do that which is very nearly impossible for them.

As a result, even though over the short term it may be that you can occasionally get some slots freed up, in the long term it seems to us inevitable that you will have just the kind of results that we have seen over the last 2 or 3 years at these four high density airports, where ultimately the whole system breaks down.

One of the things, in looking at this, that we took a look at was the alternative arrangement that the commuters came up with at National Airport. As you know, that worked somewhat longer than the other scheduling committee mechanisms.

But what we found, as of today, is even that system has gotten to the point where it does not seem to promise to answer the questions very much longer, because we have gotten to the point where everybody feels they have given enough and they are now taking the position, for the most part, that they are going to be hurt in a fundamental way in terms of the service they provide if they are asked to give up any more slots.

So we have seen again just what we saw after the PATCO strike, where that kind of approach utimately does not get the kind of fundamental fix that you need on this problem.

Senator KASSEBAUM. You don't think one of the reasons may be that they have anticipated buy/sell, and recognize that it would be a far more lucrative approach for them?

Mr. BURNLEY. I do not doubt for a moment that there are some operators who now have slots, who may have anticipated buy/sell, and who may see the opportunity to turn the existing economic right into cash or something that is the equivalent of cash, using this as the sort of reason they need to hold up making those slots otherwise available.

But I don't think that makes very much difference in the vast majority of cases and with the vast majority of operators, because they are not in this to trade. We are all in it to operate air service between these four high density airports and other airports in this country and abroad. That is what brings us to this issue in the first place: those folks want to have the opportunity to provide air service into those airports.

So, it may well be true that at the margin there have been a few cases of "pocketing", but I think in the overwhelming number of cases that has probably not been a major factor. I think we will see very, very little change overnight in existing patterns of service at any of the airports.

Senator KASSEBAUM. Of course, what makes this situation different, is that here you've got a limited market. You have a confined market. When you have a market where access is limited, then you have different factors at work in the marketplace.

I find it very hard to believe that any of the major airlines controlling a number of slots are going to give up the competitive advantage that they now have. I'm sure you gave some thought to this.

Isn't it likely that in a carrier's best business judgment, it might decide that it is not going to give up that slot and sell it, that it would be much more likely to lease the slot, which, of course, is a carrier's option under this rule.

Mr. BURNLEY. Let me make two points, if I might, Senator.

First, this is not a perfect, free enterprise solution to this problem. Secretary Dole did not view it as such when she made this decision. I certainly don't view it as such.

In fact, you are exactly right. This is a very, very closed set of markets that we are dealing with here. So, by definition, it is a regulatory answer to a problem.

Secondly, we have not gone at this to try to achieve any sort of purity or to satisfy any sort of particular principle. We have been looking for the best, most workable, solution to an intractable problem. It's a problem that has been with us for years.

Mr. Faberman a moment ago pointed out to me that the first breakdown in the committees was back in 1980, about 6 years ago. So this is hardly a new problem motivated by the recent prospect of buy/sell.

We have tried very, very hard to accommodate all of the competing legitimate concerns, and if you look at this, if you take it as a buy/sell proposal, you then have to look at all the limits we put on it to have any sense of how the overall mechanism is designed.

I think it is very important to hammer that point home, that we did not go at this to satisfy a particular principle.

Secondly, it is quite true that under this proposal, slots may be leased. We view that as a real opportunity. It is particularly an opportunity not only for carriers but for communities that depend on service in and out of these airports.

Senator KASSEBAUM. Yes. But doesn't it also create a lot of uncertainty?

Mr. BURNLEY. I think to the contrary, Senator.

It will bring certainty for the first time in years to a situation where there has been uncertainty. About the only certainty we have had is, if you are a new entrant, it is very, very tough to get in.

It will permit a community, if it wishes, to make the judgment and have its airport authority purchase operating rights and then be able to negotiate with carriers about providing those operating rights between that community and one of these four high density airports. It will permit operators to be able to do the kind of business planning that they must do if they are going to stay in business, by having some sense of predictability about what opportunities they will have in and out of these four airports.

A mechanism in the alternative that leaves that totallyto the luck of the draw creates just the kind of uncertainty that you are concerned about.

This is why, after a good deal of study of the issue, we are pretty firmly convinced that that kind of lottery is not the ultimate solution to the problem.

Senator KASSEBAUM. I have some further questions, but I will come back to them.

Senator Ford.

Senator FORD. I would be glad to yield to you for a few more minutes.

Senator KASSEBAUM. Oh, that's all right. Thank you, but go ahead.

Senator FORD. You were passing notes back and forth there. You referred to the note you received regarding 1980.

You talk pretty fast. I'm a slow talker so that makes me a slow listener. Would you pass back over that again, please.

Mr. BURNLEY. I will.

I must say that my North Carolina accent usually doesn't let me talk very fast. So I apologize.

Senator FORD. Well, then, you've been in Washington too long.

Mr. BURNLEY. That may be it.

I hope I haven't been trapped, though.

Senator, the point I made, that Mr. Faberman had pointed out to me a moment ago in a note, is that this problem, in terms of the existing system not functioning, is a problem that has long been with the folks involved in this issue, the four airports and the people that fly in and out of there.

The problem first arose in 1980.

Senator FORD. What occurred in 1980?

Mr. BURNLEY. The scheduling process broke down for the first time in 1980.

In fact, Mr. Faberman I think was at the FAA when that happened, and it might be useful to have him comment about what happened in that instance.

Mr. FABERMAN. Senator, the National Airport Scheduling Committee was not able to reach resolution in October of 1980.

They came to the Secretary of Transportation and said "We can't reach resolution, would you please do something for us?" At that point, the Department issued a special regulation allocating slots at National Airport.

But it was the beginning of the breakdown of the scheduling committees.

Senator FORD. We're talking about four airports now.

Mr. BURNLEY. Yes, sir.

Senator FORD. How many airports can you foresee in the very near future after those four?

Mr. BURNLEY. Senator, I don't foresee any. Let me expand on that for a moment.

One of the aspects of this issue that has been troubling, I know, to many folks who have an interest in it is why the Federal Government, if it is going to make these slots tradeable and permit the airlines to sell them, does not try to caputure some of the revenue.

We have tried very hard, (a), not to make this a taxing device. We think if taxes need to be raised on aviation services, that should be addressed directly and not indirectly throgh a rule of this sort that only affects four airports. Also, (b), we have tried to be sensitive to the fact that if we did turn it into a revenue producing device for any level of Government, that would be extraordinarily and seductively attractive to other airport authorities, where you do not have the kind of congestion problems that you have at these four airports. I might add that these four airports have been under constraint since the late 1960s.

We do not expect, therefore, since we have tried very hard to steer clear of letting this be a revenue-producing device, any great groundswell to move in the direction of creating more High Density airports, obviously.

Our position continues to be that, if this were a perfect world, air travel in this country would be unconstrained in all respects, and we would be able to have at these four airports the freedom to come in and leave as and when you basically please.

Unfortunately, not for budgetary reasons but because of the physical, environmental and local community kinds of concerns that you have in these four areas, we do not anticipate any time in the foreseeable future that that is going to happen with these four airports.

On the other hand, we do not have a secret list or even any thought that there are going to be other airports in the near future where these constraints will be needed.

Senator FORD. I didn't mention any secrets.

Mr. BURNLEY. Yes. But I want to make sure that there is no sense that we are planning in that direction.

Senator FORD. Well, all I asked you for was a judgment after these four airports. Will there be other airports in the future? What size airports?

Mr. BURNLEY. The answer is no.

Senator FORD. The answer is no?

Mr. BURNLEY. We do not anticipate further airports coming under the High Density Rule.

Senator FORD. But under this regulation it could.

Mr. BURNLEY. No, sir.

Senator FORD. They could not?

Mr. BURNLEY. No, sir.

Senator FORD. They are all limited to these four?

Mr. BURNLEY. Yes, sir.

Senator FORD. All right.

Let's move on just a little bit further, then.

Communities under deregulation feel like they have been helped or hurt, depending on where you are. Charleston, WV is one. There are many airports. I have gotten a lot of letters from Lexington, for instance, saying deregulate the airlines, and when you deregulated a major airline withdraws. Then I get letters back saying reregulate, reregulate.

We have had that kind of problem.

So, how can communities under this provision that are denied major aircraft service, airline service, or in their opinion have been denied—can there be a solution? Is there any way they can be helped under this regulation?

Mr. BURNLEY. Yes, sir, there is.

If I could just take Louisville as an example, our information is that today Crown is the only carrier between Louisville and LaGuardia on a regular basis. That may not be correct, but that's the best information that we have, and I think it is fairly accurate.

Senator FORD. Did you say Crown?

Mr. BURNLEY. Yes, sir. And I'm talking about Louisville-LaGuardia, and LaGuardia-Louisville.

Senator FORD. I have not had an opportunity to fly on that airline yet.

Mr. BURNLEY. If Louisville's airport authority wishes to guarantee that it has that service for the foreseeable future or additional service, under this proposal, Louisville will have the right to purchase a slot, or lease a slot if it does not wish to purchase one, and then negotiate with carriers about providing the service.

So, unlike the present situation today, where the folks who run the Louisville Airport and those who are concerned about that area have no way to get directly to this problem if they want service into LaGuardia, under this scheme, they would have the opportunity to provide that service.

Senator FORD. Do you mean leasing a slot or buying a slot at LaGuardia?

Mr. BURNLEY. Yes, sir. That's correct.

Senator FORD. What do you think that would cost Louisville, to buy a slot or lease a slot? A dollar a year for 99 years?

Mr. BURNLEY. It's going to cost them more than that, but it's going to cost them a whole lot less, we think, than $1 million.

Senator FORD. A year or for the whole thing?

Mr. BURNLEY. Well, the Senator's number, as I understand the Prudential-Bache number, is for eternity. If you buy the slot, it is yours forever, and that is what it would cost you.

Senator FORD. What is yours?

Mr. BURNLEY. Senator, I have to tell you that in looking at this, what we think it will be in hundreds of thousands of dollars for a slot in perpetuity for the most high-priced slots—it's very difficult to tell. If a slot is at 11:00 o'clock at night, it may well be that you can get it for $1 a year. I mean, it depends on time of day and it depends on what kind of market forces are at work 3, 4, and 5 years from now.

We do not anticipate the kind of prices that Prudential-Bache was predicting.

Be that as it may, whether Louisville wishes to buy the slot or simply lease it, that's an opportunity, whatever the price, that literally does not exist today for Louisville.

I don't know whether or not Louisville will want to exercise that right. They may think the price is too high. All I know is the way it works today and the way it would work under S. 1966, it wouldn't even be possible. That, we think, is an important distinction.

Senator FORD. Thank you.

Senator KASSEBAUM. Why wouldn't it be possible under S. 1966?

Mr. BURNLEY. Senator, the reason is the slots would still be controlled under S. 1966 by the carriers and no one else. The community would not have the opportunity.

Senator KASSEBAUM. You don't think they'll be controlled by the carriers anyway? The carriers are going to make a decision whether they want to buy or sell.

Mr. BURNLEY. The carriers will largely control them. But when we designed this rule, we explicitly thought about and built in the opportunity for others, so long as the slots are being used. As you know, we do have a use or lose provision.

Senator KASSEBAUM. As does S. 1966.

Mr. BURNLEY. Yes.

But the difference is, in the case of Crown, for example, in Louisville, that is Crown's decision today. In the case of the proposal that we have put out, it could well be the decision of the folks in the City of Louisville and the people in the airport authority board. We have created that opportunity in other words. If they wish to buy or lease the slots and make arrangements for service, they will be able to do so.

Under S. 1966, that is simply an option that is not available to them.

Senator KASSEBAUM. Many in the industry believe that if there were a use it or lose it provision, which I think both of us would agree in some form is very important——

Mr. BURNLEY. Yes.

Senator KASSEBAUM.——and a deadlock-breaking mechanism that was part of the scheduling agreement, it would solve the problem. It's finding that mechanism.

Now, I assume that you looked at various deadlock-breaking mechanisms?

Mr. BURNLEY. We did.

Senator KASSEBAUM. And you ruled out auction, and you ruled out various other things.

Did you consider binding arbitration at all?

Mr. BURNLEY. The answer, Senator, is we did not give it a lot of consideration because that simply is another version of what we have had to some extent in the past when there is a deadlock, and that is introducing some outside force or entity into it. It's been the FAA up until now. It would be perhaps a private arbitrator in that instance, who has absolutely no stake in the issue, who has no economic risk involved, has no commuity or city-fathers, a Louisville kind of interest, in an issue. He would sit down and try to do the best he or she can in reaching some sort of equitable outcome.

I have had a lot of personal experience with commercial arbitration, and I have been an arbitrator in some cases. Inevitably, what you see and what I have felt is pressure to compromise, pressure to "cut the baby in half."

We don't think in the long haul that that kind of approach offers nearly the same equities or nearly the same degree of certainty, so that planning can be done and investments can be made regarding all of the ancillary materials, services, and support functions that you have to have to provide regular air service.

This does not give you anything like the opportunity that this approach and our rule would.

Again, however, I want to emphasize that we are not holding this rule out as "revealed truth"on this matter. There are a lot of very legitimate countervailing concerns, and what we have tried to do is accommodate those concerns in the way we think will work best in the real world.

Senator KASSEBAUM. Well, in S. 1966, I would just say to you, too, that we are not irrevocably committed to any particular deadlock-breaking mechanism.

Speaking for myself, I am certainly open to looking at various ways, and there are other proposals around and suggestions for deadlock-breaking mechanisms. But I think that the heart of our concern is why we are taking a public asset and essentially giving it away.

Now, I don't know that we need to view it simply as a revenue concern at this time. I don't view it as that.

It seems to me it is the equitable aspect and the fairness aspect of the issue which concerns us.

It seems to me if the airlines, the major airlines, who would be holding the majority of the slots, had to consider purchasing their slots at auction it would be an entirely different matter. If I were in their shoes, I would feel the same way.

But I think that does point to a major concern with this whole issue, as we view the total spectrum of public assets that we are considering selling.

Mr. BURNLEY. Senator, if I might, I entirely agree that that is a major, perhaps the most important, concern.

I do think, though, that even though you do not own an airline, you are directly at risk if we were to use an auction approach as a consumer of airline services.

We have today enormous investments both at these four airports and at the airports from which and to which the airlines fly, in and out of the four high density airports by these carriers. I don't mean to overstate that, but it is truly enormous.

You have a billion dollar project underway right now at O'Hare for which the airlines have put collectively a great deal into the pot. United, I understand, over the years has already invested in excess of $75 million at O'Hare, and that is not in 1986 dollars. That is in preinflation dollars, to some extent.

So the question then becomes what would happen if you have an auction system and you require all of those carriers, in addition to the investments they have already made, now to bid against each other, the funds to go wherever they may go, to the airport authorities, to the Federal Government, whatever the answer may be.

That is going to be an enormous new cost. That cost, even though we do have intense competition in the larger markets, is going to get passed through to some extent because everybody is going to incur it, straight to you as a traveller. It is that kind of fairness concern that I think we also have to focus on because we don't know of any justification today for asking you or anyone else to pay an additional premium to get the very same service that you get now at a lower cost.

Senator KASSEBAUM. Thank you.

Senator Danforth.

The CHAIRMAN. Thank you, but I will pass for now.

Senator KASSEBAUM. Senator Ford, do you have any other questions?

Senator FORD. I want you to tell me about Crown.

Now, this is a vast improvement since yesterday. This is an Allegheny commuter that doesn't have any slots at LaGuardia. What do you mean about Crown?

Mr. BURNLEY. Well, sir, I must confess that I have not flown on Crown either.

Senator FORD. I think you'd better confess that you don't know the schedule of Crown Airlines between Louisville and LaGuardia also.

Mr. BURNLEY. All I know is, according to the FAA's records, Crown does provide service, has one slot that it uses in and out of LaGuardia on a regular basis.

Perhaps Mr. Faberman knows something more. We will be happy to flesh that out further, but that is what our records show.

Senator FORD. I wish you would flesh it out.

Mr. BURNLEY. All right, sir.

Senator FORD. Get that back to me.

I didn't want to get into this, but when you start talking about one of my constituent towns—Louisville, Lexintgon, Cincinnati, wherever it might be—and then you say we've got all this good service and all we have to do is spent $1 million to get a slot at LaGuardia and we're in, you know, with an Allegheny commuter, I am not sure that your advice and counsel to us would be acceptable if you were consulting with us.

Mr. BURNLEY. I'm sorry, Senator. I certainly was not offering any advice and counsel.

All I was saying was, I don't believe it was going to cost $1 million. I said I didn't think it would cost anything like that.

Senator FORD. Well, you were talking about hundreds of thousands.

Mr. BURNLEY. But all I said was whether the folks who run the Louisville or any other airport in Kentucky wish to exercise that opportunity or not is up to them.

The only point I'm trying to make is that is an opportunity for the first time that these four high density airports would be available to them.

Under the present system, and under S. 1966, it would not be an opportunity of that sort. I certainly think it very much should be left to the individual community to make that kind of judgment. It may well be that they decide they don't want to do it. It's just that they have that chance under this proposal.

Senator FORD. But you are putting them out of the business monetarily.

Mr. BURNLEY. No, sir. I don't think so.

Senator FORD. You're not really giving them any opportunity. If they don't have hundreds of thousands of dollars, they are not going to be able to get it—are they?

Mr. BURNLEY. Senator, they may not as a community be able to get new slots. But that is precisely the concern that led us and led the Secretary ultimately to decide we did not want through an auction mechanism or any other mechanism to try to charge on the front end for the existing slots. Because what we would do if we were not careful I think inevitably is put at risk the service in and out of cities like Louisville to these airports.

It is making sure that we don't do that on the front end that led us to make the decision in part that we ought to permit that service to continue without some additional fee mechanism being imposed on them.

Senator FORD. Madam Chairman, my questions and answers are a part of the record. I would reserve the right, if I may, to propose questions to our witnesses in writing for their comments in writing.

Mr. BURNLEY. Yes, sir.

We would be happy to answer those.

Senator KASSEBAUM. Of course.

I just have one other question.

AOCI has had a proposal that perhaps you are familiar with, 75 percent of existing slots would be grandfathered, and 25 percent would be auctioned, with the proceeds of that auction going to the Aviation Trust Fund and the airport authority.

Did you give any thought to that proposal?

Mr. BURNLEY. Yes, ma'am, we did.

I don't claim that, again, the 5 percent we have proposed is clearly the only correct answer to the question of whether any percentage of slots should be pulled back.

The Secretary gave very careful consideration to that issue. We spent a lot of time going back and forth on it. We ended up with her decision being to go with some recognition of the opportunity being needed on the front end for new entrants to get in right now without any costs at all being paid to anyone. That is on the one hand. On the other hand, there was very strong concern that if we are not careful in approaching this, it can cause massive disruption overnight in service to these four very key airports. If you were to pull back or put at risk 25 percent of the slots in this day of hub and spoke, I think the only thing we all would agree on is we don't know what the precise impact would be, but it would be very severe.

The carriers would be placed in a situation where they would have to make decisions about which slots they could afford to give up and what that is going to mean, inevitably, is that the smaller and mid-sized communities are going to go first in terms of their service, because you don't get the kind of revenue gains ordinarily on those trips that you do on transcontinental trips or other longer trips.

So there is no magic line here. But we did give very serious consideration to it.

Again, I did express our concerns about an auction mechanism and imposing, as it were, a surtax on travellers today.

Finally, if we need some new revenue device to put money in the trust fund, we would hope that it could be viewed on the merits, in an overt way, as a new form of taxation or a new revenue producing device, separate and apart from this issue.

What we are trying to do here is make sure, in as fair and equitable a way as we could devise, that we permit the opportunity for air service to continue in and out of these airports and for competition to be maximized. We would really like for the issue to be considered on that basis and let the revenue issue be considered separate and apart from that.

Senator KASSEBAUM. I would just suggest, Mr. Burnley, that it isn't a question of more revenue in the trust fund, it is using the money that is in the trust fund that is at issue, I think.

I believe you would agree with me on that. At least I hope you would.

Mr. BURNLEY. Senator, I hesitate to disagree. But certainly we, in the budget put out yesterday, have proposed, as you know, to recover more of our operating expenses from the trust fund. We do believe that some of those funds should be used in a way they are not being used today.

Senator KASSEBAUM. Well, we won't get into that argument today.

Thank you.

Senator Danforth.

The CHAIRMAN. Thank you, Madam Chairman.

Mr. Burnley, it seems to me—and please, I came in late—if you have already made these points or answered these questions, just tell me and I will review the record. I don't want you to have to repeat yourself just because I am late.

It seems to me that when we confer a property right on airlines that own these slots, to be able to sell these slots, what we have done is to create a new system of regulation which is controlled by airlines and not by the Government.

In other words, what we have said is that access to particular airports is something that is going to be regulated and parcelled out, not by some Governmental agency, but by the already dominant airlines at a particular airport. Further, if this analysis is correct, clearly those airlines that today possess the slots are not going to be forthcoming in opening up competition to potential competitors; they are not going to create risks for their own business by providing slots to airlines that would present those risks to them. Insofar as cash is a consideration in their sale of slots, they are not going to be generous in offering slots to new airlines that are not in a good position to pay that cash. Furthermore, once we confer what amounts to a property right on these airlines, we are never going to be able to get it back. I mean, suppose they have transferred it or entered into a long-term lease? That is something, it seems to me, from which there is no return.

In short, I think it is a bad idea.

Wherein am I wrong in my analysis?

Mr. BURNLEY. Senator, given your truly heroic service on the Conrail bill in the last 10 days, it generally pains me deeply to in any way disagree with you about anything this morning.

However, suffering that pain——

Senator FORD. Now, there's a little bit of difference in how you look at a hero.

Mr. BURNLEY. It's one of the joys of our system.

Suffering that pain in any event, Senator, I think you have just precisely described the existing system.

You are right. This is not in any way a radical change in the regulatory aspects of this mechanism. We regulate today and we will regulate April 1. But I think the points you just made about the reluctance on the part of one carrier to make slots available to others who would come into direct competition are precisely the problems we have today with the scheduling committees. That is precisely why they have broken down.

This is why we have been driven to try to find an alternative approach.

Now, in terms of the property right and never getting it back, first, we know we can get it back. We did it in 1982.

Second, we have tried to make very clear in this proposal—and again, I did say right before you came in that I think it is by now means a pure buy/sell proposal; the purist would not view this as the answer to the problem. We have tried very hard to make clear that we are not giving anybody rights in perpetuity under this ruling. In fact, we have a mechanism built in which provides a lottery between now and April 1 so that every single slot is tagged with a recall priority at these airports. That will tell the operators of those slots what their level of risk is, so long as there is a slot mechanism of any kind.

The Government has made very clear in this rule that it reserves the right to pull slots back, first and foremost for operational and safety reasons. If we decide that the airport, for some reason, cannot accommodate as much traffic in the future as it accommodates today, we have said we will come and get back whatever we need.

Second, we have preserved the right to pull slots back for international aviation commitments. We will certainly have to do that from time to time.

We have also set up a mechanism that requires that you use the slots, and if you don't use them 65 percent of the time over a 2 month period you will lose them to us.

So we have tried very, very hard to make clear that we are not creating a right in perpetuity here.

We do think, however, that it is much more likely, while United is not going to sell a slot to American or vice versa, where they are in direct competition between two cities, it is much more likely that United, if it has slots, or because of the very dynamic changes we have day to day in airline operations today because of changing market patterns, and their market pattern changes, they may well find they have a slot they don't need. And they may well sell it to someone who is not in direct competition with them.

Today, however, before you can get a slot opened up to a new entrant, what you have to do is get everybody around the table to agree. It truly is a closed circle. It is an oligopoly at each and every one of these airports.

It is getting away from precisely the problem you have described that we hope will be accomplished by this approach.

The CHAIRMAN. I am doubtful, but thank you for your answer.

Thank you, Madam Chairman.

Senator KASSEBAUM. Thank you.

Thank you very much, Mr. Burnley. I appreciate your and Mr. Faberman's being with us this morning.

[The statement follows:]

## STATEMENT OF JIM BURNLEY, DEPUTY SECRETARY, DEPARTMENT OF TRANSPORTATION

Madam Chairman and members of the subcommittee: I appreciate having this opportunity to appear before the subcommittee to explain why the consumer, the aviation industry, and affected communities will benefit from our new approach to allocating the FAA instrument flight rule operating rights or "slots" at the Nation's four high density traffic airports. With me today is Deputy Chief Counsel Ed Faberman from the Federal Aviation Administration.

### THE FORMER ALLOCATION APPROACH

We are addressing a longstanding problem: Daily air carrier and commuter arrivals and departures at four of the Nation's busiest airports—O'Hare, JFK, LaGuardia, and Washington National—Reached saturation levels in the late 1960's under instrument flight rule or "IFR" conditions. The FAA therefore imposed maximum hourly totals for IFR operations during certain hours at each airport, under what has become known as the "high density rule". The FAA imposed special, different slot restrictions much more broadly nationwide following the 1981 air traffic controller strike, but those have been lifted and are not at issue. General aviation operating rights are also not at issue in our new rulemaking.

Since 1968, slots have bene allocated among air carriers by scheduling committees authorized by the Civil Aeronautics Board, with antitrust immunity under section 414 of the Federal Aviation Act. At all times, however, the FAA has stressed that these IFR operating rights are an element of air traffic control management, and do not and never will constitute a property right in the holder. This system worked reasonably will when demand for slots and competition was constrained, but the scheduling committee mechanism has not responded well to the dynamic forces of domestic aviation deregulation. The LaGuardia Air Carrier Scheduling Committee, for example, has repeatedly failed to act on Western Airlines' request for 4 slots which we understand was to provide service to Salt Lake City.

Incumbent carriers at the airports and new entrants have found it increasingly difficult over time to reach agreement. The first formal deadlock occurred at Washington National Airport in 1980, with many formal and informal deadlocks since. Among air carriers, the committees at O'Hare, LaGuardia, and Washington National were deadlocked at the time we issued our rule in December. In fact, Washington National has been deadlocked since August 1983.

Three fundamental problems arose: First, the increasing tendency to "deadlock" in semiannual scheduling sessions restricted new entry at the airports; second, every airline, new or old, had the incentive to "pocket" unneeded slots for future use; and third, the static assignment of slots tended over time to lock in market structures at each airport and reduce competition among the incumbent carriers.

Furthermore, the scheduling committee processes were becoming less and less consistent with the statutory test of sections 412 and 414 of the Federal Aviation Act for antitrust immunity. Under those statutory criteria, we cannot continue to approve an agreement that substantially reduces competition if there is a reasonably available, materially less anticompetitive, alternative.

Madam Chairman, both you and the Department recognize that the regular deadlocks in most of the scheduling committees have stifled competition, and that slots are being "pocketed" by carriers who have no incentive to turn them in for use by other, possibly competing, carriers. These static conditions also prevented incumbents from increasing their operations at these airports and limited their opportunities to respond to new competitive opportunities in a very dynamic industry.

I believe we are both committed to advancing the benefits of deregulation by encouraging real competition at these airports and cities, both among the carriers already there and by extending opportunities to new entrants. At the same time, we recognize the need to preserve small community service, to meet our international obligations and concerns of airport operators, and to consider the "sunk costs" and other commitments that established carriers have already made at these airports.

To overcome the problems of scheduling committees, we proposed a major revision in June 1984 in how slots should be allocated and shifted among carriers. Our overriding objective was to establish a system that would permit increased competition, allow new entry, encourage efficient use of all slots, and provide maximum flexibility for carriers to modify operations consistent with their individual marketing strategies.

The Department studied numerous allocation possibilities during the past several years. That effort culminated in the June 1984 rulemaking proposals. The vast majority of the commenters on the proposed rule we issued in June 1984 accepted the need for improvement but differed in their suggestions for an adequate remedy. In addition to air carriers and commuters, we received comment from Federal agencies (in particular the Justice and State department, the Council of Economic Advisors, and Federal Trade Commission), from State and local government agencies, including airport operators, and from aviation-related organizations and industry groups as well as consumer groups.

In developing the final rule, we reviewed the available options. We looked at several deadlock-breaking mechanisms combined with a use-or-lose provision. We also considered, in the context of "buy sell," a number of initial allocation procedures, including various auction, lottery, and formula allocation approaches. From the extremely exhaustive process we culled elements from a number of the options and incorporated them into a solid, pragmatic and equitable final rule and proposal. The rule provides a comprehensive and fair regulatory framework that will increase and encourage more vigorous competition at the Nation's four high density airports. In an era of airline deregulation and energetic competition, these facilities for too long continued to operate in an anachronistic setting.

The preamble to our final rule addresses the specific comments, and sets forth the detailed justification for the new rule. The final rule, and an associated proposal, were published December 16. We recently conducted a public hearing on them on January 21.

## THE NEW ALLOCATION APPROACH

I would like to summarize the basic elements of the new rule and explain how we dealt with the major issues. Generally, anyone may purchase a slot at any of the four airports for any mutually agreeable consideration from any willing holder of a suitable slot. With respect to future access, new entrants will occupy a much better position in relation to the established carriers than they do under the old scheme, with as much opportunity, as any incumbent to acquire slots to enter new markets. Incumbents as well as new entrants will benefit from removing the regulatory hand of the Government and the restrictions of the scheduling committees. They will gain the flexibility to buy or lease slots so as to increase operations at high density airports or realign operations to compete more efficiently. Over time, the new rule will assure a more efficient use of slots, because individual buyers and sellers will have their own resources fully at risk in a way that a collective body, such as a scheduling committee, does not. Individual entities trading in the marketplace have greater incentives to seek the best information, to minimize transaction costs, and generally to put scarce resources to their highest and best use. Promoting efficient scheduling and routing will, of course, ultimately benefit the consumer.

The transfer of slots among individual parties for agreed-upon consideration is not a new concept. It was employed on a limited basis in 1982, in the aftermath of the illegal air traffic controller strike. A 22 capacity-constrained airports, carriers were permitted to buy and trade slots during a 6-week period. This temporary policy enabled carriers to make competitive changes in their service patterns and provide an opportunity for new entrants to obtain slots at high density airports. It enabled a new entrant, People Express, for example, to establish highly competitive services at National Airport by purchasing 10 slots it had been unable to obtain from the scheduling committee. In our view, the policy was successful and demonstrates that "buy sell" can work well.

I believe we have dealt sensibly and fairly with the fundamental concerns about the "buy sell" rule. First, we have taken precautions to assure that the interests of smaller communities traditionally served from the high density airports are recognized. We have maintained the existing number of "commuter carrier" slots, and a requirement that these slots be operated only with commuter aircraft, which will also help assure service to small communities. On the other hand, we allow air carrier slots to be used in commuter service, so that the potential exists for some expansion of small community service. In addition, the slots used to provide essential air service will be protected. The rule provides that EAS slots cannot be sold or otherwise transferred to another carrier, except in 1-for-1 trades at the same airport, unless the Department's EAS office determines that there will be no harm to the EAS program. Most important, perhaps, the rule will permit communities concerned about maintaining service to purchase slots and lease them to carriers which agree to serve their communities.

Second, we have acknowledged the importance of our international obligations and the Nations' foreign policy by providing that slots serving foreign points are not subject to "buy sell." We will make slots available for these services, but these slots may not be bought and sold. Because international aviation is the subject of numerous bilateral and multilateral agreements, we must preserve the authority within the executive branch to allocate slots as needed to fulfill the terms of our agreements.

Third, while the airport operator organizations have been critical of DOT's approach, the actual operators of the high density airports—the New York/New Jersey Port Authority, the O'Hare Authority, and of course the FAA at National—all support the "buy sell" approach. One reason is that the carriers' ability to control the number of slots they operate will make them more stable tenants.

Fourth and most important, we have made every effort to make the transition from the current, badly functioning system to the new one as smooth and fair as possible. For one thing, our rule creates an immediate "use or lose" requirement that will withdraw all "pocketed" slots for equitable reallocation on a lottery basis, an improvement I know you support. In addition, we have sought to avoid disruptions in service patterns and recognize the large investments of carriers in their existing allocations, by "grandfathering" most of the slots held by incumbents at these airports.

Members of this subcommittee and many of the commenters to the rulemaking have argued that it is unfair that, under the rule, incumbent operators at the high density traffic airports are receiving their slots for free and will be able to sell them. New entrant carriers and others desiring to add slots in the future, on the other hand, will generally have to buy them. Some of those who argue against the alleged windfall aspects of the rule would have the department correct that perceived problem by prohibiting slot sales and periodically withdrawing some proportion of slots from incumbent carriers and assigning them to those desiring to begin new operations. This would be the upshot of the bill S. 1966, for example, in the virtually certain event that scheduling committees deadlock.

For a number of reasons, we believe our slot allocation rule will create little, if any, new windfall and, furthermore, that any attempt to correct the alleged windfall in the manner proposed in S. 1966 would be inefficient, unfair, ineffective, and likely to be highly dusruptive of airline service.

First, incumbent carriers at the high density airports are already enjoying a windfall since they are now and have been using a limited resource for some time through the mechansim of the scheduling committees. If there is a windfall, that is it. The only real change the new rule makes is to allow those slots to be sold. This ability may make them slightly more valuable, but the increase in value would be marginal, as documented by the Council of Economic Advisors' economists who commented to us.

Second, incumbent air carriers and commuter alike, both large and small, have expended huge sums of money building terminals, development hubs, creating connections with other carriers, committing aircraft, training and stationing crews, leasing gate space, and advertising and developing markets in the high density airport cities, and in the cities served from the high density airports. To periodically take away slots, as proposed in S. 1966, would deprive these carriers of the projected benefits of these investments, and would thereby be extremely inequitable to the small as well as large carries. Moreover, to the extent that carries expect to lose slots in a lottery as the bill proposes, they may reduce such investments to the detriment of the traveling public.

To those who believe that the so-called windfall is concentrated in just a few major air carriers, I must stress that numerous air carriers and commuter operators, both small and large, hold significant numbers of slots at the high density airports. Each would be deprived of the benefits of its investments, with the smaller operators being most severely affected.

To take investments by the largest domestic carrier as one exemple, United Airlines has provided figures for the "sunk costs" that are at risk in a deadlock-breaking situation. It estimates that it has spent $74 million to date for terminal facilities at O'Hare, with another $350 million comitted to a new terminal under construction. About $15 million has been spent at LaGuardia, $5.5 million at National, and $20 million at JFK. In current dollars, these investments would appear even larger. It becomes understandable why incumbents would resist a random, fundamentally irrational periodic lottery approach as a long-term resolution at the airports where they have made such costly commitments.

Taking Washington National Airport as a different example, carriers budget $1 to $2 million for holding rooms, $140,000 to $240,000 for loading bridges, and $1,000 per linear foot in construction costs for counter space, plus computer equipment costs. While adding the cost of needed slots could be viewed as just another start-up cost of doing business, arbitrarily withdrawing slots for redistribution by lottery or otherwise would be highly disruptive and unfair to the carriers who spent large sums in expectation of using the slots they have long held.

Finally, periodically withdrawing slots and reallocating them by lottery, as under S. 1966, does not cure the windfall potential, but actually creates a windfall by arbitrarily taking the "scarce good" from a carrier that has made a substantial investment in reliance on it and giving it to another carrier that has made no such commitment. Moreover, not only incumbent carriers but also the cities they serve benefit from any current windfall, and their service would be placed at risk in any periodic, abrupt, and arbitrary withdrawal of slots needed to conduct a lottery reallocation. These communities should ask why their service is likly to be lost in such an arbitrary fashion.

Under our new allocation rule, rational and business-like scheduling decisions would occur without governmental intrusion. Air carriers would sell those slots on which they are making an insufficient return on their investments to carriers who believe they can use the slots to their and the public's economic benefit. Cities that desire guaranteed service can buy slots or contract with a carrier for such service.

Our rule recognizes that those carriers that have for some time been trying unsuccessfully to obtain slots from the scheduling committees deserve special consideration. Thus, new entrant carriers will be given a preference in any lotteries of new slots, slots returned to the FAA, and slots withdrawn under the use-or-lose provision. However, the success of People Express airlines in obtaining high density slots during the 1982 limited "buy sell" period demonstrates that the concerns in this area may be somewhat exaggerated. Also, new entrants have had an impressive competitive impact simply by entering the city markets that include a high density airport. In Washington, New York, and Presidential Airways have demonstrated the effects of competitive service and fares at the reborn Dulles International Airport. In New York, People Express has had a major impact on fares at all area airports, even though it does not serve the two New York high density airports.

Under a notice of proposed rulemaking issued along with the "buy sell" rule, a one-time withdrawal and reallocation of up to 5 percent of the slots at high density traffic airports is proposed. However, it is envisioned that some of the 5 percent would be available through the operation of the "use or lose" provision in the new rule. Thus, withdrawal and resultant service disruptions would occur only once and would be held to a minimum. This lottery, as proposed, would be conducted just as the lottery in the final rule, with a preference of 15% of the slots for new entrants, and award of 4 rather than 2 slots at a particular airport.

It was pointed out at the time of our January 21 public meeting that the positive impact of this proposal on new entrants and small incumbents could be magnified severalfold without increasing the 5% withdrawal level by simply excluding the larger established carriers which hold significant number of slots from the lottery allocation. This is an issue that is currently before us as a part of the rulemaking process.

I would like to conclude this description of the rule by pointing out that the only effective means to "recapture" any windfall which may result from the sale of slots, and short of disrupting the whole system of service at the four airports, is to impose some form of transfer fee as an adjunct to "buy sell." There is no statutory authority for that approach, and we believe we have pursued the least disruptive method to move from the unacceptable status quo to a vastly more efficient system.

## THE S. 1966 APPROACH

Having summarized the direction we have charted in our regulation, I would like to explain more fully why we do not believe the pending bill, S. 1966 can accomplish the same purposes. Putting aside the "use-or-lose" requirement of S. 1966 already incorporated in our rule, the only other significant change that your bill would make to the status quo is to add a deadlock-breaking mechanism to the scheduling committee technique for reallocation of slots. In the event of failure to obtain unanimity among air carriers, a virtual certainty, your bill would require the FAA to recall a "reasonable percentage of slots currently in use" for purposes of a lottery in which new entrants could participate. An established carrier would only be protected from "loss of an undue proportion of its slots" in the event of recall.

We believe this deadlock-breaking approach has five weaknesses. First, the FAA becomes the arbiter of a "reasonable percentage" of slots needed to ensure competition at each airport. This is a virtual replay of the pre-1978 attempt to have the Government, in the form of the CAB, arbitrate airline competition, but merely in a different forum. As an economic and legal matter, justification of precisely what "reasonable percentage" is needed to enhance competition will be dificult if not impossible, since we won't control which slots will come out of which markets, nor which markets will be served by the slots in new hands. Comments on our proposal to do this on a one-time, very limited basis have pointed out the difficulties.

Second, from the perspective of new entrants especially, a lottery is not a satisfactory basis for making business decisions about entering any particular market. It would literally boil down to the "luck of the draw" whether a particular service could begin. Valid market analysis would be impractical under such conditions. Also, the number of slots a carrier could obtain under such a mechanism is minimal, with no real opportunity to obtain the number of slots needed to initiate service. The opportunities for small incumbents would be almost nonexistent. This is why a number of Postderegulation new entrants support "buy sell." In contrast, the existence of a market in slots, as provided in our new rules, permits a solid financial analysis of costs, demand, and other competitive factors with respect to markets consciously chosen.

Third, incumbents would still have little, and perhaps reduced, flexibility to increase operations or adjust schedules at high density airports in order to respond to competitive needs and opportunities.

Fourth, communities other than those with protected eas service under S. 1966 would stand to lose their flights in "the luck of the draw". I ask you to consider what service is more susceptible to loss under a periodic withdrawal mechanism. I suggest it might be the very service you are trying to preserve—that which serves mid-sized communities at convenient hours but does not produce the best load factors. United Airlines indicated as much at our public hearing. It is important to stress that United and other major carriers serve these mid-size markets, while new entrants could be expected to serve high volume and high frequency markets.

Fifth and most important, S. 1966's process will end in the ultimate deadlock, when all incumbents have been ground down to the point where a further loss would constitute an "undue proportion" lost. This has effectively occurred under the national airport commuter committee's deadlock-breaking mechanism. Not only would the approach become ineffective in this way, but it would cause a highly arbitrary and economically inefficient redistribution of slots along the way. It is for this reason that the Regional Airline association supports the "buy sell" approach rather than the mechanism the commuters have been using.

In closing, I would like to point out that the slot sessions conducted to establish each carrier's base allocations of slots, along with the public hearing FAA conducted 2 weeks ago on our new rule and proposal, both strongly indicate that we have a workable basis to shift from the past, inadequate mechanisms to a flexible, efficient, and equitable allocation technique. I hope discussion and detailed analysis of the issues as a part of the rulemaking will convince you of the significant overall benefits of the "buy sell" rule.

This completes by statement. We would be pleased to respond to the committee's questions.

Senator **Ford**. Madam Chairman, while we are waiting for the next witness to prime his pump, I am going to have to leave. My attendance is required at another committee. But I have read the testimony of Mr. Barclay. He hit some points that are very valuable as they relate to who gains from the slots and how they become cash assets.

He also touches on small communities. Those are two of the items that I am very concerned about.

I hope you will accept my apology that I have to go. But I did not want to leave without saying that I think his testimony is very good.

I have read it, Chip, and I like it.

Mr. **Barclay**. Thank you, Senator.

Senator **Kassebaum**. Thank you, Senator Ford.

Our next witness is Mr. Charles Barclay, executive vice president, American Association of Airport Executives.

It is a pleasure to welcome you, Mr. Barclay.

## STATEMENT OF CHARLES M. BARCLAY, EXECUTIVE VICE PRESIDENT, AMERICAN ASSOCIATION OF AIRPORT EXECUTIVES

Mr. BARCLAY. Thank you, Madam Chairman.

I would appreciatie adding our written comments in full for the record.

I would just like to review with the committee the four basic points we tried to make.

Those are that the DOT rule is bad public policy, it is bad economics, it is going to be bad for the air transportation system, and that S. 1966 is the correct Congressional response to that policy and it has the unqualified support of airport executives.

I am not going to make any effort in our testimony to review some of the details that are flaws in this rule, but I think some of the other witnesses after me will be doing that. My silence is only because we think that there are just some overriding policy issues here that badly need to be discussed.

Most simply, this rule is lousy public policy.

First, the rule discards a public assets which should remain a public asset. Access to high density airports represents a critical element of both interstate and international air commerce. Converting that public asset to a private property right to be bought and sold simply is not in the public interest.

By comparison, let's apply this policy to another limited right at an airport—the airport gift shop concession in the terminal.

What if an airport operator wanted to give away free this or really any other limited business opportunity at the airport, and then further said that the private company who received this concession could sell it or do anything it wanted to with it, keeping all the profits thereafter?

The airport operator in that case has broken two Federal laws, violated its Federal grant assurances, and, in most States, committed a felony, and would be prevented by the DOT from making such an irrational business decision. FAA would tell that airport they had to repay every Federal penny they had received under the grant system.

But the same DOT argues that it is in the public interest to do exactly what is illegal for airport gift shops with airport landing slots.

Our second public policy complaint is simply to ask even if we wanted to discard this public asset, why are we doing so for free?

Congress is being presented with some excrutiating choices in its effort under Gramm-Rudman-Hollings to reduce the Fedral budget deficit, and, as a policy matter in that process, is looking at disposing of Government assets.

The Senator went through this. The estimates we have gotten from the FAA of the number of slots at the four high density airports is 4,600. If you multiply that times the Prudential-Bache numbers, you get the Federal Government walking away from an asset worth somewhere between $3.4 and $4.6 billion.

We have heard two reasons for this unique idea of disposing of valuable assets for free. One is the argument that Congress might not go along with selling this public asset. Our response is that we hope not.

The second is that the industry supporters of this rule would disappear. We think this is true. Almost the only supporters are the airlines reaping the windfall.

We are not shocked to learn that they would support a free grant of the property right, but would think twice about bidding at auction for slots or having to lease slots from the Government or having to pay peak hour landing surcharges to gain the same economic effects on demand that the proponents of this rule recite.

Madam Chairman, a public policy analogy to the equity and wisdom of this rule would be for the Government to announce that everyone in their car on the 14th Street Bridge yesterday morning between 7:00 and 9:00 a.m. now owns their space on the bridge. They may use their space, sell it for whatever they can command, or lease it to others under whatever terms they might devise.

Imagine the long-term impact of such a policy on all the economic classes who all need access to their workplaces in Washington, DC? Would we stand for such an arbitrary transfer of a public asset to a private property right?

It would regulate demand for the bridge. But is that really the Government's only concern?

Our second main point is that the rule is based on thoroughly flawed economic arguments.

We have heard that this rule is an effort to let market forces allocate scarce resources; that the Government is out of the business of regulating airline entry and that therefore to do so at the high density airports would amount to reregulation.

If I could have chosen just one point to make to the committee, it would have been to emphasize that we are not talking about open markets. We are talking about physically closed markets.

The foundations of airline deregulation were that there were no physical or capital barriers to entry into the airline business, that the barriers to entry were simply legal. But, when markets are physically closed, to argue that the marketplace should allocate resources is to argue that electric power needs no regulatory oversight, and to argue that in the next gasoline supply crisis, price should determine who gets the fuel.

By definition, a closed entry market means someone regulates entry, somebody has to let you in to what is closed. The only choices are either an unbiased Government that can try to do its best to try to fairly ration access to a closed market, or, as in the DOT plan, the incumbents become an oligopoly which rations access in the best interests of the oligopolists.

One of the frustrations, Madam Chairman, is that the proponents of this rule are trying to apply free market theory in markets that are not free.

Among the most absurd arguments in favor of this rule is to say that it allows the marketplace to decide who gets access and that it gets the Government out of the decision. Here we have a proposal for the Government to give for free valuable access to some of the companies in the market, and it tells them that they can then sell that access to the rest of their competitors, and with these prices, it winds up being a multi-billion dollar distortion of the marketplace by Government, rather than free enterprise at work.

Our third point is that the rule is not in the best long-term interest of the air transportation system.

The rule will unfairly dilute service to small and medium sized communities.

The high density airports represent, as a practical matter, a regional monopoly for many smaller communities needing access to the national system.

We saw in 1982 that these cities were the first to have their slots sold because that's how economics is intended to work.

The sellers are the low density markets and the buyers are the high density markets.

This result is unfair because again, we are talking about a market with physical barriers to entry. It is like giving the local phone company freedom to refuse to serve rural areas so that added capacity is available to serve high volume customers.

My written statement contains more detailed information on the small comunity service impacts, and I hope the committee will have time to look at it.

Additionally, on this third point, we would like to ask the committee to carefully consider the long-term impact of this policy.

If the value of a slot is determined by how scarce it is, then why would the incumbent airlines support capacity additions, such as a new runway, which automatically reduce the value of their slot? If you owned a slot on the 14th Street Bridge worth $20,000, would you support building a new bridge in the future if you knew that, upon completion, it was going to make your slot worth $2,000?

Further, we wonder why eliminating the system of entry where new entrants must buy access from old incumbents is called deregulation and is a bad kind of entry for trucks, but installing that same system of entry at airports is called a "free market solution" and is good for airlines?

I could go on with the dichotomies that we see in this. But in its lowest common denominator, this rule simply takes markets with physical barriers to entry, adds capital barriers to entry, and then uses that addition to excuse the Government from the messy problem of trying to balance demands for high density airports.

It's the old Vietnam War solution: you declare victory and get out.

In response to Senator Ford's question, I would also like to bring out, that only four airports will be covered by this. I think the committee should realize that back in 1982, slots were sold at both DFW and Denver, which were not high density at the time. I think the committee should accept that if this is decided as the right way to allocate scarce airport resources, it is going to move to more than four airports.

S. 1966 is the correct legislative response to this litany of flaws in the DOT rule.

First, it keeps a public asset a public asset.

Second, it forces to the maximum extent possible a negotiated solution to access problems by the airline scheduling committees. That is not an ideal solution under the concepts of deregulation, but this problem does not seem to be awash in ideal solutions. It is the best solution achievable.

Third, a lottery is not neat. It is not fun for DOT to administer. And it is not an effort to further maximize the use of already crowded airport facilities. It is just an effort to be fair to everybody who needs access to high density airports.

The only addition to S. 1966 we would suggest the committee consider is whether binding arbitratrion be added to lottery allocation as a potential tool for the FAA to use in resolving deadlocks.

Senator, we would like to urge the committee to report S. 1966, and recommend its adoption.

If I could add one other response to Secretary Burnley's statement, when he says that a community can buy a slot and that that is a solution, that is also true under the Senators' bill or under the current system. A community can go out and contract with a carrier to give its service to an airport if it currently has slots at a high density airport.

The question here is really this. I have the right to get a seat on the New York Stock Exchange, but capital barriers keep me from doing that as a practical matter. And if you are talking about a public asset, like a high density airport, we don't think you should be shutting out a lot of the markets that need that access with these new capital barriers to entry.

We think that is the key flaw.

Senator KASSEBAUM. Thank you very much, Mr. Barclay.

You, of course, heard the testimony of the Deputy Secretary of Transportation, and the Department of Transportation's view that any other way of dealing with this, after looking at various other proposals, would be very disruptive of service. They argue that nothing else would really work.

How do you answer that?

Mr. BARCLAY. Well, when you have physically closed markets, you are going to have difficulties. Everybody is not going to get access.

But you really just have two choices. One, you let the private company, as DOT would do, determine whether or not their competitors get into that closed market. Or, two, you can do your best, as the Government, to come up with the fairest system you can to ration access.

Getting into the details of lotteries are messy. They have problems. All of that is very true. But when you face the choices in the real world, you are going to have a much better system when you take the long-term view of the air transportation system, if Government is controlling that closed market rather than the oligopolists controlling that closed market.

I want to also say that it may sound like I am being critical of the airlines, but I am not. They are paid to make the most profit for their companies. That is what they should be looking at. They are not paid to make sure that new entrants get the rights to access to high density markets. They are not paid to make sure that other people's passengers get access that is needed to closed markets.

They are paid to look out for their own interests. It is Government that is paid to look out for fairness when you have a closed market situation.

Senator KASSEBAUM. Many believe it is the fact that use-it-or-lose-it and deadlock-breaking mechanisms have not been implemented by the scheduling committees that has placed us in this particular situation today. Do you think that is an accurate portrayal?

Mr. BARCLAY. I do, Senator.

The history really is that over the last decade we have had problems at some of these high density airports. It has taken at times the Administrator threatening that he will decide what schedules get to go in order to force the scheduling committee to sit back down and negotiate an agreement.

Nobody wants to give up slots to new entrants. New entrants always want more than they are going to be given by the scheduling committee. It is simply having a threat over that process that makes it work.

I think the Senator correctly pointed out that ever since this rule has been proposed as an NPRM, it is no surprise that there has not been agreement since anyone in his right mind would sit on his slot if he thought it was going to be worth something as a valuable asset in the near-term.

If I could make one other point on that, too, on the windfall that the Secretary addressed, once the market value of these slots is determined, which will take place in the first couple of weeks or months of this rule, there is a cash payout here. This is an asset. The airlines can go out and borrow money on this asset. It is like oil in the ground. It might fluctuate somewhat in value. But this can mean real cash in the pockets of the airlines.

As these are sold between airlines, we see the same effect on the passengers, whether you auction it from the Government, whether the carriers buy it among themselves. This is a new cost to the passengers that the pasengers are going to pay.

So I do not think that the distinction between an auction and buy/sell is valid.

Senator KASSEBAUM. Obviously nobody is very enthusiastic about lotteries.

Is there any good thing to be said for a lottery concept?

Mr. BARCLAY. Yes. I think there is.

If you take a look at lotteries, they are not made to make the companies happy. It is not too surprising that the commuters at National are not happy. The lottery basically wants to make sure you maintain your existing service patterns for the passengers.

I have not heard a lot of comments that the commuter passengers out at National have been in great turmoil. We have not been seeing that in the press. I don't think people have been getting those kinds of complaints.

You want to keep the basic service pattern that is there for the passengers.

You do want to protect the incumbents"base. They deserve protection for a base that they have built up over the years and the funds that they have expended. And you want to provide some element of entry to do two things—both to give new entrants a chance in the market, and to police prices.

One of the problems, as you look down the road in the DOT plan, would be that carriers might well not get out of medium sized markets, but where is the policeman on prices in those markets, for the local market between the high density hub and that medium-sized community?

If you have a closed market and no one else can enter it to police prices, you have a real problem.

So we see lotteries as keeping everybody on their toes. If they work the way we hope they will work, they will simply force negotiation because the outcome is so bad that they have to make decisions.

I hesitate to draw the analogy between Gramm-Rudman and the budget, but it is there.

Senator KASSEBAUM. Well, certainly Gramm-Rudman is forcing us to keep our feet to the fire on the budget. That is true.

You mentioned that Denver and—what other airport was it?

Mr. BARCLAY. Denver and DFW both had slots that were bought back in 1982.

Senator KASSEBAUM. How did that work, and why was it done there at that time?

Mr. BARCLAY. Back in 1982, during the controllers' strike, they simply passed a rule—there was no hearing or anything else—they just said that carriers were free to buy and sell slots from constrained airports.

The FAA has, in fact, said that by 1990, 32 airports are going to have some kind of capacity controls. That does not necessarily mean that they will be high density. But they will have some kind of capacity controls at some hours throughout the United States.

I don't see how you can say that at four airports, this is the right way to allocate these resources, and that for the rest of them it's not when you have capacity constraints.

But there will be tremendous economic pressure, too, if these assets are worth what we think they are worth. There is going to be a lot of pressure.

Senator KASSEBAUM. What happened at Denver when they did that?

Mr. BARCLAY. Things like Cortez, Colorado to Denver became Denver-Honolulu; Madison to Chicago because Chicago-LaGuardia. One airline at Denver, Pioneer, sold all of its slots off and went out of business. It was able to make more money selling slots than selling airplane tickets.

A large number of small communities at Denver lost service to higher density markets.

That is the way this system is engineered to work.

Senator KASSEBAUM. But, did it take care of the problem?

Mr. BARCLAY. Oh, we will admit that this will take care of a capacity problem.

Just to go back to the 14th Street Bridge example, you can ration access this way. You can solve a density problem. But we do not think that is the only thing the Government has to think about here. You have a physical closing of a market that is something public, that everybody needs to get at. You have to regulate it, and somebody will regulate it. The carriers are going to regulate it or the Government is going to .

Senator KASSEBAUM. Thank you very much.

We appreciate your testimony.

[The statement follows:]

## STATEMENT OF THE AMERICAN ASSOCIATION OF AIRPORT EXECUTIVES

I am Charles Barclay, executive vice president of the American Association of Airport Executives (AAAE). AAAE is a professional management organization representing 1,000 airport executives who are responsible for the planning, management, and operation of over 600 airports nationwide.

### INTRODUCTION

AAAE applauds these timely hearings and encourages the Congress to take an active role in assuring that the Federal response to the significant capacity/delay problem is an appropriate one. Our testimony will attempt to present the committee with some thoughts on the long-term issues which should not be overlooked in this dilemma. Our main concern is that the DOT "buy/sell" rule will, in our view, have serious long-term consequences for the national airports system.

Our first question is why would the U.S. Government give away free a property right worth multi-millions?

DOT has given away the public ownership of landing "slots" at today's four "high density" airports to the incumbent airlines using those slots. Beginning April 1st, airlines can sell or lease those slots to anyone for as much money as they can command.

This DOT regulation is bad economics, bad public policy, and disastrous for small community air service.

The "buy/sell" rule has been touted as a market based approach to allocating landing rights that is consistent with the concept of airline deregulation.

That's completely inacurate. Airline deregulation was based upon open entry into the airline business—new entrants and potential new entrants, rather than Government regulators, police the price and service of incumbents. But at the high density airports we are talking about physically closed markets, where due to air traffic control constraints entry must be limited. In such circumstances giving economic control of entry to the private companies that presently operate in the closed market is extremely insound public policy with the following results:

A. It gives windfall profits to the incumbent airlines.

B. The Government creates an oligopoly which for anti-competitive and profit motives can control entry into the market.

C. Contrary to the argument that this rule is consistent with deregulation, it perpetuates the 40 years of airline regulation. A majority of incumbent airlines got these "most valuable of all" slots as route awards under regulation prior to 1978, and they will now control those landing rights indefinitely.

DOT seems not to mind inconsistency when it comes to policy on regulatory economics. When the trucking industry was regulated the Federal Government gave away operating certificates for free to some companies, then required new entrants to buy operating rights from incumbent trucking firms if they wanted to get into the market.

Trucking deregulation, which this DOT strongly supports, was specifically designed to repeal this inequitable system of entry that favors old, incumbent companies. But the same system of entry is exactly what DOT supports for airlines at high density airports.

Economic theory properly demands we let free enterprise allocate resources in an open market. But, in a closed market the Government must ration resources in some fashion as it does for electric power, local phone service, gasoline supply crises and other closed-market circumstances. That's not a happy Government decision, but it is a necessary one when there are physical barriers to entry into a market. Allow me to emphasize this point. The fact that the market is physically closed means, by definition, that someone will regulate entry. The choice is between the incumbent carriers regulating entry or the Government regulating entry.

Theory aside, the practical effects of buy-sell are unearned profits to large, incumbent airlines and the loss of service to small and medium size communities. In 1982 when buy-sell was tried the loser was small community air service. Slot buyers were airlines with long haul, high density markets; sellers were airlines with short haul, low density markets.

The high density airports, for many smaller communities in their region, represent the only practical access to the National Air Transportation System. In a closed market situation these small cities deserve at least the same chance at access as the large plane filled with passengers who only want to arrive at the hub to connect with flights for other destinations.

AAAE commends Senator Nancy Kassebaum (KS), chairman of the Senate Aviation Subcommittee, together with Senators John Danforth (MO), James Exon (NE), Ernest Hollings (SC), Wendell Ford (KY), John Rockefeller (WV), Bob Kasten (WI), Barry Goldwater (AZ), William Proxmire (WI), Howard Metzenbaum (OH), James Abdnor (SD), Sam Nunn (GA), Paul Simon (IL), Quentin Burdick (ND), Frank Lautenberg (NJ), Dennis DeConcini (AZ), Larry Pressler (SD), Donald Riegle (MI), Spark Matsunaga (HI), Dale Bumpers (AR), John Stennis (MS) and Albert Gore (TN) who have introduced legislation to repeal this flawed DOT rule. This bill would also establish a system for allocating slots at high density airports which gives everyone who needs access an equal chance of gaining access to this limited public asset. Airport executives support S. 1966 without qualification and hope the Congress will act quickly to pass the bill.

## SYSTEMS' USE OF CAPACITY

As is generally recognized, the immediate problem is one of air traffic control (ATC) capacity. It's a serious problem that several summers ago caused great inconvenience to passengers and piled economic costs on the air transportation system. The ATC problem needs a solution. But, Madam Chairman, assume for a moment that we find that solution—even if we could instantly double the number of controllers and modernize all ATC equipment to the ultimate—we would still be heading toward the exact same problem that faces us today. Because airport capacity in its total sense, and the way the system uses that capacity, is at the cornerstone of the present and future delay problem. Once ATC capacity is built to well over that required to handle all airplanes in the air, we still will be able to fit only so many airplanes on the taxiways waiting to take off at O'Hare. The practical reality is that capacity additions at the existing high density airports will be either marginal or non-existent, so the question of how we solve the short-term ATC problem is really a prologue to the not-too-far-away question of how will we respond when a key high-density airport becomes physically saturated? How is its limited space allocated fairly, and how do we accept this eventual reality without also accepting a system permanently fraught with delay, inconvenience, and arguments over who gets access?

The core cause of 1984's, and to a lesser extent today's delays in the system, is not general aviation users, the weather, or FAA's management of the ATC system, all of which certainly represent marginal factors at these key airports; it is simply that our air transportation system is exceedingly reliant on a very few, high density airports for connecting passenger traffic. The system may be on its way to becoming over-reliant on these few, saturated airports. I would point to the other testimony presented on the "ripple effects" on the whole system of delays at only one of these airports as evidence. This is not a problem that the Federal Government can regulate or legislate away by fiat. However, we can be sure that the Federal Government adopts policies that provide incentives for the system to shift itself away from this imbalance rather than adopting policies which add to it.

The airline economics of hubbing and concentrating connecting traffic at one point is the cause of this system imbalance. But those economics are also central to low passenger fares in harmony with reasonable airline profitability. In other words what is good for airline profits and passenger fares, when carried to its extreme, is unfortunately not good for our capacity/delay problems. Let me be clear in stating that we are not finding fault with the airlines. They are acting as rational business executives. And, in general, the economics of hubbing traffic is good for the system, the airlines and the passengers. The problem develops when airline economics tempt the airlines as a group to get carried away. I suppose the absolute extreme would be patterning the whole system after Federal Express—take everyone to one airport and send them back out in full planes to their final destinations. Clearly we must find a balance between the positive aspects of hubbing and the over-concentration of the system at too few airports.

In approaching the problem of system delays and over-saturated airports we believe the Federal Government should keep its attention on the connecting passenger element in the system. Probably all airports have or can have the capacity available to handle their local markets for many years to come. However, the key, high density airports are also required to accommodate the passenger demand of many travelers who have absolutely no preference where they connect so long as they finally arrive at their destinations. As examples, approximately three-fourths of the passengers at Atlanta and one-half of the passengers of Chicago and Denver arrive at those airports merely to change planes for other destinations. AAAE believes that it should be the aim of Federal policy to provide the incentives to utilize the flexibility inherent in this element of the market trying to compete for scarce capacity. This effort seems to make even more sense when one realizes that system-wide airport and ATC capacity is more than adequate to accommodate demand for some time to come if a regional reallocation of just some future connecting traffic could take place.

Madam Chairman, we do not seek to try and over-simplify a complex problem. Obviously all elements of the system add demand and at one time or another might appear to be the largest culprit at a key, congested airport. Our point is that all airports face the various elements of demand for capacity that exist in the system and we believe that all airports have or can have the capacity to meet those demands if we could wave a magic wand and shift the "discretionary connecting passengers" who do not need (or want) to utilize already saturated airports. We have no magic wand to suggest, but rather believe that both the Federal Government and local airport operators need to adopt policies which provide incentives to the airlines to shift some connecting traffic; and obviously not provide incentives to continue its concentration at only a few high density, over-congested airports.

Madam Chairman, we had a serious system bottleneck in 1984 because six airports needed slotting at least during, some periods of the day. FAA projects that in four years, by 1990, thirty-two airports will require some slot restrictions and by the end of the century, sixty-one airports will have to be capacity controlled. But, one wonders when we see the effect of capacity strains at just six airports, what the affect of constraints on ten times that number of airports will be? To maintain a deregulated system we must assure that the legal barriers to entry, eliminated by the Airline Deregulation Act, are not replaced with physical or economic barriers to entry.

*Slot sales are inappropriate*

Of paramount concern to airport executives is the FAA's "buy/sell" rule for slots. This proposal is precisely the type of counterproductive solution to our immediate problems that we fear. Worse, this proposal is unfair in the short-term to small communities while its long-term counterproductive effects are at work. We have attached to our testimony the full text of our comments to FAA on these proposals.

First, we would like to answer the people who say the FAA's buy/sell rule is simply a mechanism to permit the Federal Government to get out of the slot allocation business so that market forces can allocate this scarce resource. Our reply is nonsense. Rarely has there been proposed a greater Federal Government intrusion in the market place. Here we have a proposal for the Federal Government to give a valuable resource (the slot) away for free to some of the participants in the marketplace (incumbent carriers) and tell them they may sell that resource to the rest of the participants in the marketplace (non-incumbent carriers). If slots at the high density airports are indeed likely to be worth $200,000 to $500,000 each, this proposal amounts to a multi-million dollar distortion of the marketplace by the Federal Government, rather than free enterprise at work.

Further, any type of marketplace mechanism for the allocation of slots, even those without the flaws inherent in the FAA rule, would be unfair to small communities in the short and intermediate terms. If a few key airports can determine the financial and operational condition of the entire system, as was amply demonstrated in 1984, then how can we propose to allocate access to those key airports by wealth? At least for the present, access to the high density airports represents access to a regional monopoly for many small and medium size communities. As an analogy Madam Chairman, let's hypothetically assume that Kansas has physically exhausted its potential sites for electric powerplants, has more demand than capacity, and cannot purchase additional electric power from outside the State. Would we say electricity is now a scarce resource which should be allocated to the people who are willing to pay the most? We doubt this would be the response as opposed to some across-the-board rationing system that put pressure on all users to find alternatives.

Once again, it's important to remember that we are not just considering buy/sell at the four airports covered by FAA's rule. If by 1990, thirty-two airports are slotted to the highest bidder where does the airplane land when it leaves Wichita or Topeka? Can they economically compete for slots available to the highest bidder at Chicago, Denver, St. Louis or Kansas City?

A buy/sell system in the short and intermediate terms is relatively easy to forecast. In general, the buyers will be the carriers with long-haul, high density route potential, and the sellers will be the carriers with short-haul and low density markets. On the other hand, if we ration this scarcity across-the-board, as we surely would other essential, monopoly services, it would be equally fair and unfair to all communities and carriers in the short and intermediate terms. And further, giving all participants the incentive to find alternative hub airports in the long-term.

Beyond the questions of the equity of any access allocation system is the issue of creating incentives to develop the most efficient use of our nationwide airport and air traffic resources. Any allocation mechanism which, for example, places high costs on a slot at 5 PM at Chicago O'Hare creates the incentive for an airline to find the largest plane possible and fill it with as many connecting passengers as it can manage to manipulate onto that routing (since the local O&D market will remain relatively constant). In other words, an economic allocation enhances the incentives for carriers to further congest saturated airports with greater numbers of connecting passengers at peak hours. Further, it creates the anomoly that, in our example, passengers from a market such as Los Angeles, who don't want to be in Chicago, are forced to connect there; while passengers from a small city in Kansas, who need to be in Chicago, cannot get there at all because they can't afford the slot.

The long-term, efficient use of our national airport facilities argues for the Government to create incentives for the airlines to shift some of the connecting passenger traffic away from saturated airports and ATC facilities into the non-saturated and under-utilized facilities. The further development of mini-hubs and new hubs provides the most efficient use of our "physical plant" nationally, and any federally-sponsored access allocation system should enhance rather than retard this trend.

*Slot allocation lotteries should be used*

AAAE supports and urges the adoption of S. 1966. The chairman and co-sponsors of this legislation have suggested a balanced approach to allocating scarce capacity. Airport executives suggest that any allocation system have the following goals:

(1) Provide a maximum incentive for the Scheduling Committee participants to negotiate agreement;

(2) Provide fair access to all communities requiring service to the restricted hub; and

(3) Provide a long run incentive for all airlines to shift some of the connecting passenger traffic away from the congested hub airports.

With these goals in mind, AAAE commends the lottery allocation method called for in S. 1966 and further described in our comments. This system meets the first goal, by penalizing the Scheduling Committee for non-agreement compared to the DOT rule's reward to carriers for non-agreement. A negotiated, compromise solution is probably the best solution in the real world for the majority of passengers, airlines, and communities. However, where there is not agreement, a percentage of slots would be taken away from the incumbents and awarded by lottery in a drawing in which both incumbents and new entrants would participate. In combination with a strict use-it-or-lose-it policy this mechanism is equally fair and unfair to the airlines, passengers, and communities who wish to utilize the limited access.

We believe that the uncertainty and random nature of the lottery will have two primary effects. The short-term effect, as stated, will be to put pressure on all participants in the Scheduling Committee to compromise and negotiate an agreement since no carrier, no matter how strong in the market or cash rich can be sure of its outcome from a lottery. The long-term effect, again on all carriers, is to force them to look at shifting some portion of their connecting traffic to other airports. Clearly there are economic limits to a carrier's incentive to shift connecting passengers from key hubs, but there is just as clearly an ability and necessity to make some shifts for the sake of the saturated hubs and the efficient use of existing airport and ATC resources. Airport executives believe the proposed lottery system is administratively workable, fair, and best meets the needs of the total Air Transportation System.

Madam Chairman, we hope the Congress will seriously consider the consequences of buy/sell and pass S. 1966 before the rule is permitted to go into effect.

Finally, we wish to offer for the record our partial summary of the effect of slots sales in 1982 on service to small communities.

Senator KASSEBAUM. We have a panel next consisting of Mr. Reilly, Mr. Hitchcock, and Mr. Gammon.

It is a pleasure to welcome all of you.

We have Mr. Donald Reilly, executive director of the Airport Operators Council International; Mr. Cornish Hitchcock, legal director, Aviation Consumer Action Project; and Mr. Frederick Gammon, first vice president, National Association of State Aviation Officials.

Welcome.

Do you have any order in which you wish to proceed?

[No response]

Senator KASSEBAUM. Then why don't we start in the middle.

## STATEMENTS OF DONALD REILLY, EXECUTIVE DIRECTOR, AIRPORT OPERATORS COUNCIL INTERNATIONAL; CORNISH F. HITCHCOCK, LEGAL DIRECTOR, AVIATION CONSUMER ACTION PROJECT; AND FREDERICK GAMMON, FIRST VICE PRESIDENT, NATIONAL ASSOCIATION OF STATE AVIATION OFFICIALS

Mr. REILLY. All right, Madam Chairman. We will start in the middle.

If I may, I would like to submit our statement for the record and merely summarize its main features at this time in order to stay within our time allotment.

Senator KASSEBAUM. Thank you.

Mr. REILLY. Madam Chairman, AOCI is strongly opposed to the Department of Transportation's final slot rule. We are concerned that the DOT's plan would give incumbent carriers permanent ownership of landing and take-off slots; allow those carriers to then buy and sell those slots for 100 percent profit, slots which they never paid for in the first place, and require other carriers to buy slots to gain entrance in the first instance, consequently putting them at an economic disadvantage.

AOCI strongly believes that:

One, slots are Government-sanctioned public operating rights and should not become private assets.

Two, the general public and the airport operators who already purchased the avigation easements have as great, or greater, investment in these slots; yet it would be the incumbent airlines who will reap windfall profits by selling the slots.

Three, the DOT rule makes no effort to address the capacity constraints at airports since the DOT buy/sell proceeds will not be used to increase airport capacity or to reduce demand during peak hours.

And, four, incumbent carriers with their slots in hand will have no incentive to support airport efforts to increase capacity since any new capacity would benefit new entrants and, concomitantly, reduce the market value of the incumbent's slots and increase his competition.

Therefore, Madam Chairman, we feel that your bill, S. 1966, is a significant step in the right direction, for it seeks to improve the airline scheduling committee process with a slot use-it-or-lose-it requirement, and it would require DOT to establish an airline scheduling committee deadlock breaking mechanism.

Madam Chairman, AOCI has considered the slot problem at considerable length and has developed an approach which we feel contains equity, balance, and incentives to make a slot allocation program work.

In summary, AOCI proposes that for each of those hours in which airline scheduling committees are unable to establish slot allocations for the traditional 6 month scheduling period, the following procedures should be instituted:

First, 75 percent of the total number of hourly slots should be grandfathered. This would provide basic scheduling stability.

Second, the other 25 percent of the hourly slots selected by lottery should be auctioned by the FAA. This would provide a strong incentive to come to a reasonable, voluntary solution through the scheduling committee process.

Three, only auctioned slots could be transferred in any after-market buy/sell arrangement.

And, four, all funds collected by the FAA from the auction mechanism would be used to reduce the cause of the slot problem—that is, to increase airport capacity—by one-half of the funds going to the Aviation Trust Fund for redistribution by FAA to airports for capacity improvement projects, and the other half of the funds going to the airport where the auction was conducted for their individual airport capacity improvement programs, or to encourage off-peak scheduling opportunities by the airlines.

We strongly believe that all revenues derived from slot sales should be used to create new airport capacity.

Finally, essential air service slots would not be subject to the auction and thus would be protected. The same protection would be given to slots for international operators required under bilateral arrangements.

AOCI further urges that any slot allocation program that may ultimately be adopted be limited to a 2-year trial period, and not confer any permanent ownership or proprietary rights to the airlines. A slot allocation program also specifically must recognize the airport's proprietary rights and responsibilities, and, further, that any landing or take-off priority an airline receives under any Federal airport slot rule does not and cannot confer on that airline any automatic rights to any other airport resource.

Such additional rights must be obtained separately, in the customary manner at the capacity constrained airport, through regular airport-airline contract use arrangements.

In conclusion, Madam Chairman, we urge the subcommittee to take immediate action to stop the DOT buy/sell rule from being implemented and to consider the AOCI proposal as a viable alternative.

In concluding, Madam Chairman, I would also like to submit the statement of the Conference of Mayors. This statement supports the AOCI position, and they are in the process of developing a more formal presentation to be made at a later time.

Thank you very much, Madam Chairman.

[The statement follows:]

## STATEMENT OF J. DONALD REILLY, EXECUTIVE DIRECTOR OF THE AIRPORT OPERATORS COUNCIL INTERNATIONAL

Madam Chairman and Members of the Subcommittee: I am J. Donald Reilly, Executive Director of the Airport Operators Council International (AOCI). AOCI is the association of those governmental bodies that own and operate the principal airports served by scheduled airlines in the United States. Our U.S. members annually enplane more than 90 percent of the domestic and virtually all international scheduled airline passenger and cargo traffic. In addition, our members operate many of the reliever and general aviation airports throughout the nation which supplement the larger airports in their communities and entire regions.

I am pleased to be here today to express AOCI's views on the Department of Transportation's final rule and the legislation you have introduced regarding slot allocations at the high-density airports. This rule will have far-reaching effects not only at the high-density airports but also at smaller and medium hub airports and on the entire air transportation system.

### OBJECTIONS TO DOT RULE

The Airport Operators Council International (AOCI) is strongly opposed to the Department of Transportation's final rule. We are greatly concerned over DOT's plan to give incumbent carriers permanent ownership of landing and take-off slots and then allow the carriers to buy and sell slots. While AOCI is not opposed to the use of market mechanisms to allocate slots, the DOT "buy-sell" plan is neither a true market-based mechanism nor is it desirable public policy. We think it is unfair to allow certain incumbent airlines to sell slots that they have not paid for in the first place, while others must pay upfront in order to gain access to the high density airports. Such a policy is inequitable and will seriously disadvantage new entrants, smaller incumbents who have few slots, and the smaller communities they serve.

The DOT plan will create a monopoly for those airlines that happen to be holding slots when the rule goes into effect by "grandfathering" 100 percent of those slots. It has been argued that these airlines have made substantial investments at the airports where they hold slots, and that they are somehow entitled to them. We would argue that slots are not a private asset, they are government-sanctioned public operating rights. They have been limited by the federal government at the high density airports, and therein lies their value. The FAA has in effect created the "value" for these slots, and is now prepared to confer that value on incumbent airlines at no cost.

We believe the public and the airports have as great, or greater investment in these slots. Yet it will be the incumbent airlines who will reap "windfall profits" by selling the slots. The rule makes no effort to address the capacity constraints at high-density airports, since "buy-sell" proceeds will not be used to increase capacity or to reduce demand during peak hours. Incumbent carriers, with their slots in hand will have no incentive to support efforts to increase capacity at these airports, since any new capacity could benefit new entrant competitors and reduce the market value of incumbents' slots.

We agree that there must be some "grandfathering" in any slot allocation method in order to maintain stability in the current services carriers are providing. Grandfathering a substantial percentage of incumbents' slots, rather than 100 percent, would be sufficient recognition of the incumbents' investment and current service at the high-density airports, while freeing up slots for new entrants and smaller incumbents. Only as an afterthought does DOT recognize that 100 percent grandfathering "could place new entrant carriers and incumbent carriers with few slots at an initial disadvantage" and thus proposes to amend the rule by an initial withdrawal of up to five percent of incumbent slots for reallocation by lottery. We believe that five percent (which would consist of withdrawn slots, slots returned by "use-or-lose" restrictions and newly available slots) is too small to meet the growing needs of new entrants and smaller incumbents. Unless changed, this policy will maintain the economic interest of the incumbent carriers to the detriment of small incumbents and new airline entrants and will adversely affect service to the smaller communities and airports they serve.

However, even if a larger pool of slots is made available to these carriers, they will still be disadvantaged since they will have to pay for slots which the incumbents get for free. For these reasons, AOCI believes that the DOT rule is seriously flawed and inequitable in its present form and it should not be allowed to go forward. Once the incumbent carriers are given these slots and begin buying and selling, there will be no turning back. We can then only sit back and bemoan the adverse consequences that will follow. Giving away public property rights—which slots represent—for private gain will set a bad precedent and is not in the public interest.

### S. 1966

AOCI therefore supports the bill you have introduced, Madam Chairman, to prohibit the rule's implementation. S. 1966 is a step in the right direction in that it seeks to improve the scheduling committee process rather than totally abandoning those committees as DOT proposes. The scheduling committees have served a useful purpose during this period of slot constraints and we believe they can and should continue if modifications are made to make them more effective. A "use-it-or-lose-it" requirement for slots, as called for in the bill, should be enforced as part of any slot allocation method to prevent hoarding of slots and anti-competitive practices.

An even more important needed change is to establish a "deadlock-breaking" mechanism for the scheduling committees. S. 1966 would require the DOT Secretary to establish such a mechanism when a scheduling committee is unable to reach unanimous agreement whereby all new, returned and unused slots and a "reasonable percentage of slots "reasonable percentage of slots currently in use" at the airport would be allocated by a lottery. While AOCI believes that a reallocation of a certain percentage of slots is necessary to create a greater incentive for carriers to reach agreement, we do not believe that a lottery is the best means for determining which airlines will receive those slots. In the spirit of deregulation, we believe that market forces should be relied on to the maximum extent possible in allocating slots. Allocating slots at random through a lottery will not assure that slots are put to their most productive use.

A lottery mechanism will have potentially disruptive effects on the scheduling committee process. It would create a situation wherein if a single new entrant is unable to obtain the slots it desires, that carrier can merely prevent committee agreement and then take its chances in the lottery, knowing it has nothing to lose and everything to gain. The greater the number of slots that would become available through the lottery, the greater the temptation to forestall agreement. Such a scenario would be grossly unfair to incumbents and other new entrants who otherwise would be successful in obtaining slots through the scheduling committee. Further, with a lottery, some carriers may get slots they don't even want and wouldn't use. Those slots would then remain idle until the "use-or-lose" period expired and they are returned to the committee for reallocation. Meanwhile, the incumbent who lost the slot, or another new entrant who could use the slot productively, will have no opportunity to do so.

AOCI has proposed an alternative slot allocation method with a "deadlock-breaking" mechanism which we believe provides more forceful incentives for the scheduling committee concept to function properly, offers fairness and equity to all parties involved, and promises real progress toward eliminating the problem of overcrowded airway and airport facilities.

### AOCI SLOT ALLOCATION PROPOSAL

AOCI proposes that for each of those hours in which airline scheduling committees are unable to establish slot allocations during the traditional six-month scheduling period, the following should be instituted:

1. *Seventy-five percent of the total number of hourly slots should be grandfathered to the airlines operating those slots at the time of the committee deadlock.* The airlines should not be permitted to buy or sell these slots in any aftermarket. Grandfathering will provide a certain amount of stability to the current services incumbent carriers are operating and some limited protection will also be obtained by smaller communities for retaining air service as it exists today.

2. *Twenty-five percent of the total number of hourly slots should be auctioned by the FAA.* These slots would represent a substantial amount of carrier capacity during the period in question and, therefore, provide incumbents and new entrants with more incentive to come to a reasonable, voluntary solution through the scheduling committee. A lottery process should be used to select the 25% of slots, which incumbent airlines would have to give up each time the committee deadlocks, for placement in the auction pool. The auction should be conducted from one pool, containing both air carrier and commuter slots, and any private or public party such as communities may bid for each of these slots. The rationale for using only one pool reflects the broad needs of new entrants, the continuing commuter industry growth potential, and the importance of providing free and equal access to scarce slots. We also believe that the prospect of acquiring a slot for only six months will hold down the price of auction slots as well as their resale value.

3. *Only auctioned slots may be transferred in any aftermarket buy-sell arrangements.*

If a carrier or other party has not purchased the slot, the slot should not be saleable thereby precluding any unjustified windfall. By using an auction rather than a lottery, incumbents who lost slots to the 25% pool would have the opportunity to recapture their slots by bidding for them in the auction. All carriers would have a fair and equal chance of acquiring slots.

Our proposal would also insure that the proceeds from slot sales are used to address the capacity problem that created the slots in the first place.

4. *All funds collected by FAA from the auction mechanism should be distributed as follows:*

(a) one-half to the Aviation Trust Fund for redistribution through the AIP enplanement formula to airports for capacity improvement projects.

(b) one half to the airport at which the auction occurs to be used for airport capacity improvement projects or to create incentives to encourage airlines to operate in off-peak hours.

We strongly believe that all revenues derived from slot sales should be kept within the air transportation system and used for the creation of additional capacity. By permitting half of the funds derived from an auction to be added to the AIP enplanement funds, the money would be spent to encourage a general increase in capacity throughout the entire airport system and possibly prevent certain airports from becoming capacity constrained. Allocating the other half of funds to the airport directly involved allows that airport to first create as much new capacity as possible and, if new capacity becomes finite due to factors outside the airport's control, then funds will be used for programs to encourage off-peak operations. It makes no sense to allow slot "profits" to be taken by private carriers when there are capacity improvement projects that could be funded.

5. *Essential air service slots would not be subject to the auction or buy-sell and would be thus protected.* Because of the uncertain future of the EAS program it is also important that state and local governments and communities be allowed to participate in the auction to ensure service to the high-density airports. All current slots for international service should be grandfathered and any new international operations that become necessary should be provided by the federal government from unused slots that are available, the creation of new slots, or by buying slots through the auction. International slots should not be permitted to be bought or sold by the carriers themselves.

6. *There must be stringent adherence to slot "use-it-or-lose-it" provisions.* Each auctioned slot must be used by incumbent carriers within 60 days by new entrant carriers; each slot obtained in an auction process must be used at least 90 days before it can be re-sold; all slots grandfathered or obtained by the auction process must be used 71% of the time in any two consecutive months. Slots not used within the specified period of time would revert back to the FAA for distribution at the airline scheduling committee meeting, or by auction if recaptured between such meetings. (This allocation procedure should also apply to newly created slots and previously grandfathered slots that may become available due to bankruptcy, non-use, or any other reason).

We believe that our slot proposal is a far better and more equitable approach than that proposed by DOT. AOCI further recommends that any slot allocation method that is ultimately adopted involving buy-sell should be limited to a trial period not exceeding two years. Because the full impact and consequences of "buy-sell" cannot be known at this time, a trial period is necessary to allow a proper evaluation to be conducted to assess the impact and to determine whether modifications or improvements are needed. It would also recognize that slot allocations do not confer permanent ownership or proprietary rights to the airlines.

The DOT rule comes dangerously close to encroaching on airports' proprietary rights by permanently giving away runway access rights. In light of this we emphasize that DOT/FAA must recognize that airport operators retain and strongly assert their proprietary rights to establish their own capacity limits and to allocate scarce airport resources, by pricing or other allocation mechanisms such as auctions, when necessary due to groundside capacity constraints, including runways, taxiways, gates and terminals, as well as environmental or public policy constraints. Any landing or take-off rights an airline receives under this rule does not, and cannot, confer on that airline any automatic rights to any other airport resource. Such additional rights must be rights to any other airport resource. Such additional rights must be obtained separately in the customary manner at the capacity constrained airport through regular airport-airline contract and use agreements.

## CONCLUSION

AOCI believes that the ultimate solution to the problem of scarce airway or airport capacity is for Congress and the Executive Branch to take an immediate role in concert with the industry, to insure the development and provision of adequate aviation facilities so as to minimize, at the earliest possible date, the need for any slot program. However, as the federal government and industry work together to relieve any long-term need for a slot program, we must face the reality of present day capacity problems. Shortages in both airway and airport facilities do exist today and there must be an adequate method devised to provide access for all airlines wishing to serve the system.

While our objectives must be achieving a long-term solution to the problem of scarce capacity, and initiating immediate programs to maximize current capacity for present use, we must establish an equitable and fair slot allocation system to address today's capacity problem. The DOT "buy-sell" rule is not an appropriate short-term "fix" nor does it provide an acceptable long-term solution. In fact, by effectively turning over slot allocations to the carriers—who will now have a vested interest in protecting their slot investments—the rule will undermine cooperative efforts among all involved parties to increase capacity and will perpetuate artificial slot constraints.

Madam Chairman, we strongly urge the Subcommittee to act quickly on the bill to rescind the "buy-sell" rule and to consider the AOCI alternative proposal. Thank you.

Senator KASSEBAUM. Thank you, Mr. Reilly.

Senator Kasten, did you have a conflict in getting here? If so, would you like to make a statement?

Senator KASTEN. Madam Chairman, thank you very much.

First of all, thank you for allowing me to participate in these hearings because I am not a member of this subcommittee. I understand there will be a series of hearings.

I just want to say that I am pleased that you are focusing the Aviation Subcommittee's attention on the buy/sell slot rule.

I ask unanimous consent my statement be placed in the record.

Again, thank you for allowing me to participate. I hope that in future hearings I will be able to participate in person more.

Senator KASSEBAUM. Thank you very much.

Without objection, your full statement will be made a matter of record.

[The statement follows:]

## Opening Statement by Senator Kasten

Madam Chairman, I am pleased that you are focusing the Aviation Subcommittee's attention on the buy/sell slot rule. I would like to commend you, Senator Kassebaum, for your extraordinary leadership in not only introducing legislation which overturns this ill-advised and potentially disastrous rule, but also for acting so quickly by holding these hearings so soon after the fact. I am also pleased and proud to join you as an original cosponsor of your legislation.

As we all know, this new rule affects only four major airports: Washington's National, New York's JFK and LaGuardia, and Chicago's O'Hare. But although it only technically affects four airports, it really has a much deeper impact.

Hundreds of airports rely solely on one small air carrier, usually a commuter line, to get its passengers to the central airline hubs at those four airports. They could be faced with no service whatsoever under this new proposal.

In my own State of Wisconsin, eight communities rely on commuter service to O'Hare. Of those eight, only Milwaukee and Madison have other access to O'Hare aside from the commuters. The other five: Green Bay, Appleton, Oshkosh, La Crosse, Wausau, and Rhinelander all rely exclusively on commuter airlines for service to Chicago. Chicago serves as their gateway to the rest of the Nation as well as the world.

Two commuter airlines are headquartered in my home State: Midstate Airlines and one of the Nation's largest regional airlines, Air Wisconsin. These two airlines fly from Chicago to the cities I have just mentioned. Without their service, those cities could go the way of Marshfield and Wisconsin Rapids.

These two communities suffered greatly from a trial buy/sell which occurred a few years ago. Under this trial buy/sell, Lakeland Airlines, a small commuter line, sold its time slots which had previously been used for service from O'Hare to these two cities. Since no other airline served either city, their terminals have gone empty. This forced passengers to travel long distances by car just to get to an airport. Making matters worse, as a direct result of no air service, the cities have had additional problems in their attempts to bring in new businesses to help their struggling economies. As you can see, I have witnessed in my own State of Wisconsin the disastrous impact that this rule can have on a community, as well as the domino effect that can follow.

As for the specifics of the buy/sell rule, I would ask why airlines should be allowed to buy and sell slots when they never paid for them in the first place. All this rule does is to effectively put money in the pocket of every airline that would "own" a slot. Under Gramm-Rudman-Hollings, a more prudent idea may have been for the airlines to buy the slots from the Government! But then, of course, our smaller communities that depend on air service to these four airports might still be hurt.

In sum, I believe this new rule is ill-advised, short-sighted, and could prove disastrous to my home State of Wisconsin. The Kassebaum bill addresses the problem of slot turnover, while protecting the smaller communities that depend on service to National, JFK, LaGuardia, and O'Hare to get to the rest of the world. I am pleased to be a cosponsor and it is my hope that we can report this bill to the full Senate very quickly.

Senator KASSEBAUM. Mr. Gammon.

Mr. GAMMON. Thank you, Madam Chairman and Senators Exon and Kasten.

I welcome the opportunity to appear before you today to provide comments on the recently issued DOT rule which would permit the buying and selling of landing rights at four airports.

I am Frederick Gammon, the first vice president of the National Association of State Aviation Officials, and the director of the Wisconsin Department of Transportation's Bureau of Aeronautics.

We have a prepared text, and I will not go through it. I would like to submit that for the record. I will paraphrase, however.

Simply put, our concern, is that the recent DOT rule provides one of the final nails in the coffin of scheduled service to small and medium sized communities. It does so in the name of a "market-based" congestion control. In fact, it is only an opportunity for "windfall profits" for incumbent carriers and the eventual domination of the high density route structure by the most affluent air carriers.

We compliment you, Senator Kassebaum, and the many co-sponsors, for your leadership in introducing S. 1966 in an effort to return some reasonableness to the dialogue on airport capacity needs.

NASAO objects to the DOT rule for several reasons.

Philosophically, we are very concerned by a rule based on the concept of giving away a public commodity and then limiting the access of the public to that commodity on an ability-to-pay basis. Practically, we object because we believe the rule, coupled with the uncertainty of future public policy and funding opportunities, will eventually eliminate scheduled service to small communities.

We are very concerned about the effects of this rule. Our support for S.1966 is to try to stop the rule before the April 1 deadline, for we feel, as I believe Senator Danforth indicated earlier, once April 1 is here and everything is in place, and the assets are on the books, there will be no turning back.

Let me make a couple of comments on changes that I think are important to note.

In the rule, the DOT supposedly accommodates small community air service with the provisions for EAS. I would like to point out that the recently released administration budget for 1987 does not include funding for essential air service.

At a recent FAA hearing on the slot rule, we asked the FAA what the effect would be if EAS were not funded? The response was that it would probably then eliminate any EAS or any buy/sell provisions if EAS were not funded and went away.

So we feel that certainly there is a dichotomy provided here. EAS points are supposed to be protected at the same time they are trying to do away with it.

I have a long statement on "windfall," but I think that has been covered very well by other speakers.

One of the things that I do want to highlight, though, and it has been highlighted before, is that we feel that from a long-range standpoint this rule does reduce the incentive to increase capacity, particularly at these four airports. In my own case, I am familiar with the Chicago situation.

We feel that by merely allocating slots that we reduce any incentive to increase the capacity of those four airports by other means. That means that we will not be finding other solutions to those capacity problems.

There are a couple of other points I do want to make as they pertain to this rule.

One point is that we see a division in the slot committees.

We have found, that there is a distinct difference now between what we traditionally call commuters and the regional carriers.

After deregulation, the commuters, as we knew them, became regionals. They served a much different market than the commuters of today.

We also find that the closer-in communities, say, within 150 or 200 miles of the hub airport, as much as 50 percent, of those passengers are destined for that community, not a connection.

In conclusion, I would just like to restate that NASAO suports the intent of S. 1966, and that we, as our first priority, should grant people of our States and our country equitable access to our transportation hubs. We have grave concerns about the road the DOT rule has started us down. The easy solution of designating more airports as high density and permitting the sale of landing rights to solve difficult future capacity problems clearly stands to destroy our national system of air transportation.

Where is the public benefit in having landing rights as an asset for private companies?

With that, I will defer to the next speaker.

[The statement follows:]

## Statement of Frederick Gammon, Director, Bureau of Aeronautics, Wisconsin Department of Transportation, and First Vice President, National Association of State Aviation Officials

The National Association of State Aviation Officials represents the service agencies in the various states as well as the Aviation Departments of Puerto Rico and Guam. Its members are the Aeronautics Commissions and Departments created under the laws of states to foster, develop, and regulate aviation at the local and state levels.

The primary purpose of NASAO as an association is to foster and encourage cooperation and mutual aid among the States, as well as Federal and Local governments, in developing both State and National air transportation systems that will be responsive to regional, state and national needs.

Madam Chairman and members of the subcommittee, I welcome the opportunity to appear before you today to provide comments on the recently issued DOT rule, which would permit the buying and selling of landing rights at four airports. I am Frederick Gammon, First Vice President of the National Association of State Aviation Officials and the appointed Director of the Wisconsin Department of Transportation's Bureau of Aeronautics. With me today are my counterparts within state government from Tennessee, David S. Fulton and North Carolina, Willard Plentl, Jr.

NASAO'S primary purpose as an organization is to foster and encourage cooperation between the states, as well as the federal and local governments in the development of an air transportation system that will be responsive to all needs. Our individual members are charged with the responsibility of fostering, developing, and regulating aviation at the local and state level. The state aviation officials also have a responsibility to the citizens of their state to assure that adequate air service and access is provided.

Simply put, our concern with the recent DOT rule is that it provides one of the final nails in the coffin of scheduled service to small and medium-size communities. It does so in the name of "market-based" congestion control. In fact it is only an opportunity for "windfall profits" for incumbent carriers and the eventual domination of the high density route structure by the most affluent air carriers.

We compliment you, Senator Kassebaum, and the many co-sponsors for your leadership in introducing S. 1966 in an effort to return reasonableness to the dialog on airport capacity needs.

### SUMMARY

NASAO objects to the DOT rule for several reasons. Philosophically, we are insulted by a rule based on the concept of giving away a public commodity, and then limiting the access of the public to that commodity on an ability-to-pay basis. Practically, we object because we believe the rule, coupled with the uncertainty of future public policy and funding opportunities, will eventually eliminate scheduled service to small communities. This will evolve while an economist's dream plays out amongst transportation corporations attempting to understandably make the best possible return on their investment.

### FUTURE EFFECT

Probably our most significant problem with the DOT rule is that the supposed "end-all solution" ignores a number of frightening uncertainties of the future. In other words, what will be the combined effect of the DOT rule and other near-future changes in public policy and/or funding.

Consider the possibilities:

1. A reduction in funding levels to provide needed system and airport capacity increases will no doubt be a result of the Gramm-Rudman-Hollings law. FAA Administrator Engen has been quoted as saying that Gramm-Rudman will not affect capacity improvements. NASAO believes the full drama of the budget-balancing act is far from being in clear focus to bank on such assurances.

2. The future of Airport Improvement Program funding is also uncertain and will assuredly affect what capacity improvements will (or will not) take place at the major airports, as well as the regional system of reliever airports surrounding them. With the FY 87 budget request, appropriated AIP funding will fall more than one-half billion dollars behind the authorized levels. Will there be adequate funding to assure capacity improvements?

3. Tax reform discussions last year included the potential for the tax-exempt status of various state and local development bonds to be modified. Airports, par-

ticularly major airports, depend heavily on these bonds for airport improvements. We assume that the continued dialog on tax reform will include a discussion of bonds. Has anyone considered the ramifications of any changes on capacity improvements and the relationship with the new "market-based approach" to capacity control which is embodied in the DOT rule?

4. The Administration's FY 86 budget request called for the early elimination of the Essential Air Service Program. We expect the same in the FY 87 request. This is the same DOT, which claims that small community air service is protected under the buy-sell rule. Which document are we to believe, the press release announcing the buy-sell rule or the budget request? Again, there is much uncertainty and lack of confidence in what the future holds.

5. As an eleventh hour complication, the FAA has released the proposed policy on airport access and capacity. How will this policy interplay with the buying and selling of slots?

### WINDFALL

While much has been said about the ability of the carriers to grow and prosper in the deregulated environment, we believe that the initial allocation of slots to incumbent carriers is an unfair "windfall profit". Further, it continues regulation under the guise of a "market-based approach" by establishing a system that requires new carriers to purchase slots which were obtained as a result of earlier CAB—regulated route awards. The rule is clearly contrary to DOT actions in the deregulation of other transportation modes.

We believe the rule will eventually result in an absolute dominance of the marketplace by a few carriers and their dual designators. This will not serve the public.

### REDUCES INCENTIVE TO INCREASE CAPACITY

No one knows better than the state aviation officials of the need for airport capacity increases to serve the public. We are intimately involved in the planning of future airport requirements through our state aviations system plans. We are concerned that the DOT rule destroys the incentive for proper expansion to accommodate future capacity needs. In fact, NASAO takes this question one step further. Not only does this rule reduce an incentive to increase capacity at the four high-density airports, but we believe it provides an easy fix to future capacity problems by creating a mechanism to declare *more* airports as "high-density" and then have the buy-sell "solution" applied. While we have the assurance of DOT spokesmen that this will not happen, would not it be a much simpler solution than fighting environmentalists for airport expansion, fighting Congress for funding and fighting the inconsistencies of the system to get the capacity improvements underway?

The flexibility that this rule provides to the FAA to merely "withdraw" landing rights if the capacity appears to be unmanageable is inappropriate. We should not provide a convenient method to allow constraint of demand to be an administrative alternative to effective government involvement, planning and program implementation.

### NO "SERVICE" ORIENTATION

We have heard much about how the DOT rule will benefit the carriers in providing for growth at capacity-limited airports in a deregulated environment. While that may be well for the carriers concentrating in high-density, high-yield markets, it gives no consideration to smaller communities.

"Community welfare" may not be one of the most important concerns in DOT rulemaking, however, it is one of the criteria state aviation agencies are obligated to assure. As the effect of the Airline Deregulation Act continues to shake down the industry, the smaller communities end up being the losers. A recent GAO study indicated that seven states, including Kansas, have had reduced weekly airline flights. This is with the protection of the EAS program and without the hub constraint of the buy-sell rule.

The final indication of a lack of concern for community service is evident in the airline and commuter representatives comments to the DOT rule filed last week. Those representatives are opposing anyone other than an airline (such as communities, governments and "private entities") from purchasing slots. Their reason: they do not want anyone else to "make a profit or to exercise economic power to manipulate airline service patterns and scheduling". This is interesting justification coming from private entities that stand to gain profit and economic power from the DOT rule. Where is the concern for service to the public in these statements.

### S. 1966

**NASAO supports the intent of S. 1966. As we see it, the bill would force FAA oversight of any congestion problems at the four airports and provide time for the governments, the airport operators and industry to work out long-term and meaningful solutions to present and future capacity problems. The state aviation agencies stand eager to contribute to this problem-solving exercise to assure an open—public access—policy.**

**Our first priority should be to grant the people of our states, and the country, free and equitable access to our air transportation hubs. We should eliminate artificial constraints and unnecessary regulation that merely make assumptions as to what capacity should be, and virtually removes any incentive to find other solutions.**

### CONCLUSION

**We have grave concerns about the road the DOT rule has started us down. The easy solution of designating more airports as "high-density" and permitting the sale of landing rights to solve difficult future capacity problems clearly stands to destroy our national system of air transportation. Where is the public benefit in having landing rights as an asset for private companies?**

**NASAO appreciates the opportunity to provide comments to the Subcommittee, and we encourage you to move quickly to enact legislation to repeal the DOT rule and bring reasonableness to this discussion.**

Senator KASSEBAUM. Thank you very much, Mr. Gammon. Mr. Hitchcock.

Mr. HITCHCOCK. Thank you, Madam Chairman and Senator Exon.

Let me say at the outset that ACAP opposes DOT's recent decision and we commend you and your colleagues for taking such swift action on the issue.

The most objectionable aspect of the DOT rule is the fact that it does confer such an incredible windfall on airlines holding slots at these slot-controlled airports.

We think there is something fundamentally wrong with taking these slots, which were allocated to the airlines at no cost, and letting them sell them for what was half a million dollars 4 years ago and, quite probably, may be as much as $1 million according to the Prudential-Bache study.

We think your bill is useful legislation, not only because it would block such a giveaway, but also because it would attempt to improve the current system through the use it or lose it and the deadlock breaking mechanism. It is appalling that you have slots going unused at these busy airports, where the demand is so great.

One comment on the bill.

You indicated in your statement, Madam Chairman, that the bill was intended to provide an interim action necessary to protect the Federal interest and use of the airports. We agree.

Obviously, the long-term solution is to try to expand airport capacity, and this subcommittee obviously has taken the lead in that regard. It is deeply appreciated.

While that approach is important to increase the supply of slots, it is also necessary to focus on dealing with the demand aspect, particularly if there is an expansion to 20 or 30 slot-controlled airports in the next decade or so.

This poses for us something of a dilemma. Frankly, we are not sure that the slot committee approach is the best long-term solution. There is something wrong with letting competitors sit down together and divvy up the slots that are available with their competitors. On the other hand, we are uncomfortable with the idea of a pure, free market, as DOT has proposed. Each solution has its own drawbacks.

One aspect of your bill ought to be clarified, I think, and that is whether or not the provisions in here would be in effect for all time or just until Congress had a chance to study the matter further.

Your statement in the record, Madam Chairman, indicated that it was intended as an interim measure but, as drafted, it might potentially foreclose any experiments in the future if the reforms in your bill don't work and further steps need to be taken, or if you decide to move toward a more market-oriented approach.

With respect to the concept of buy/sell, let me make several observations.

There was a study performed in 1983 by the Federal Trade Commission that studied the experiment following the PATCO strike in 1982, when you had the slot sales that Mr. Barclay referred to.

I would encourage you to take a look at it because it did indicate, interestingly enough, that new entrants were able to get into some airports, and also there was no evidence that it automatically led to higher fares.

That addresses some of the concerns. But, as I mentioned, it does not fully satisfy them or deal with the problems in the DOT approach.

Looking further down the road, or as an alternative if some kind of buy/sell seems inevitable, let me make a couple of suggestions if it seems that we are going to be going this way.

One way to deal with the give-away problem or the windfall problem that might be useful is to have some kind of initial auction and put all the slots up on the market. If you have that kind of auction, I think that will deal with the concern about incredible gains, if you just put everything up at once.

Another approach might be to move the discussion away from terms of buying and selling, which does create the notion of proprietary rights.

If you are going to be doing anything more market-oriented, it might be more useful to talk in terms of "leasing" these public rights, to make it clear that they are public rights and that they are not to be regarded as assets.

We made the suggestion in our statement that, if you do move in that direction, something like a 6 month lease timed to coincide with the airline's schedules might be a better way than permanent slots.

The other suggestion which is allowed by your bill and which was an element of the DOT rule is allowing cities that are served from slot-controlled airports to buy or lease slots which they could allocate to carriers willing to serve them. That does seem to be a promising way, in some instances, for cities to get service they might not otherwise get. We would encourage you to consider that as well.

That concludes the statement.

I would be happy to respond to your questions.

[The statement follows:]

## STATEMENT OF CORNISH F. HITCHCOCK, LEGAL DIRECTOR, AVIATION CONSUMER ACTION PROJECT

Madam Chairman, members of the Subcommittee: On behalf of the Aviation Consumer Action Project (ACAP), I appreciate your invitation to testify this morning on S. 1966, which would overturn the Department of Transportation's recent decision allowing airlines to buy and sell take-off and landing "slots" at busy airports. Airport access is a very important competitive issue which affects the travelling public as well as the industry, and thus today's hearing is very timely.

At the outset, Madam Chairman, let me say that ACAP opposes DOT's recent decision, and we commend you and your colleagues for taking such swift action on this issue. In making this statement, I want to note that we are not unalterably opposed to a buy/sell concept, if it can be shown that DOT has adequately resolved the problems and inequities that have built up under the current system. The rule before you, however, falls far short of the mark.

The most objectionable aspect of the DOT rule is the fact that it confers an incredible windfall on airlines holding slots at the four slot-controlled airports in question (Kennedy, LaGuardia, O'Hare and Washington National). There is something fundamentally wrong with letting airlines sell these slots, which were allocated to airlines at little or no cost, for as much as $500,000 each, and may be more. If that is not an blatant giveaway, I do not know what is.

We believe that S. 1966 is useful legislation, not only because it would block such a giveaway, but also because it attempts to improve the current system short of the drastic buy/sell approach taken by DOT. Specifically, we think the bill is on the right track with its effort to implement an effective deadlock-breaking mechanism which gives incumbents more of an incentive to reach agreement or risk losing some of their slots. We are concerned by the fact that the slot committees, as currently operating, have tended in recent years to protect incumbents by freezing their slot allocations at relatively static levels. Thus, this reform is a step in the right direction.

Similarly, we support a "use it or lose it" requirement, which will assure that the public is receiving the highest number of flights possible at slot-controlled airports. It is appalling that slots can go unused at these busy airports, when the demand is so great.

Thus, while we support the specific elements of your bill, we recognize that they will not provide an ultimate solution to the airport capacity problem. I think your statement in the Congressional Record hit the nail right on the head, Madam Chairman, when you said that S. 1966 "provides the *interim* action necessary to protect the Federal interest in the fullest use of these airports" (emphasis added). We agree. Obviously, the long-term solution is to increase available capacity through more airport development, and this Committee has taken the lead in working to assure that such development is adequately funded.

While such an approach will increase the supply of airport slots, it is also necessary to focus on the demand for such slots, because, as the Chairman and Senator Hollings have pointed out, the demand for these slots is likely to increase to such a point that over 30 airports may require some type of slot allocation by the early 1990's.

While the scheduling committee approach may have worked tolerably well during its first decade, we are skeptical that it is the best long-term approach to the slot demand problem. We are uncomfortable with the notion of allowing airlines who are direct competitors to sit down together and divvy up the market, even with the safeguards that currently exist or that would be incorporated by S. 1966. On the other hand, we are also uncomfortable with the notion of a pure open market, such as DOT has proposed, where slots in effect become just another corporate asset. In short, this is one of those problems where each solution has its own drawbacks.

This brings me to the one aspect of S. 1966 which causes us some concern. In your Record statement, Madam Chairman, you indicated that S. 1966 was intended to give Congress a chance to consider this issue "without ending for all time the possibility of a buy-sell experiment." While we endorse this approach, we think the bill should be clearer on this point, because it could be read as blocking any buy/sell program, even if the concerns raised by the DOT rule are satisfactorily addressed at some time in the future. Rather than set the scheduling committee structure in legislative concrete, it may be better for Congress to maintain some flexibility by allowing DOT to try alternative approaches if, after the reforms in S. 1966 have been given a fair chance to work, it appears that additional steps need to be taken. (As an aside, I should note that in discussing all of these allocation questions, we assume that air carriers will be treated separately from commuters and those airlines providing Essential Air Service, as provided in S. 1966 and as is the current practice.)

As I mentioned at the outset, we do not find buy/sell objectionable per se, provided that it is considered with greater care than has been evident to date. A useful document is a May 1983 staff study by the Federal Trade Commission, which considered the buy/sell experiment in the spring of 1982, when the FAA allowed slot sales at the nation's 22 busiest airports, which were then subject to slot restrictions as a result of the PATCO strike.

The experience during that six week period provides some data that responds to the philosophical concerns about buy/sell. Specifically, smaller and newer carriers seemed to be the biggest winners, as People Express and Muse Air were able to obtain slots which they had been denied under the previous regime. Similarly, the study was unable to discern that the prices paid by the airlines for these slots—ranging in price from $12,000 to $500,000—had a perceptible impact on the fares paid by the public. The study also noted that fare levels reflect the scarcity of landing opportunities, regardless of whether slot sales are permitted, noting that average fares were already 20 percent higher at slot-controlled airports than at airports without such restrictions.

Having said that, we do not draw the conclusion that DOT's buy/sell approach is the solution to the slot demand problem, and there are alternatives which could be considered if problems persist, even after experimenting with the reforms contained in S. 1966.

The giveaway problem could be addressed by holding an initial auction of all slots at any slot-controlled airports. This would deprive the incumbent carriers of the windfall that they would receive under the DOT plan and would make the plan more equitable.

A related approach would address the concern that slots would become an airline's property right once they are purchased in any initial auction. Rather than sell or give slots to an airline, DOT could instead lease them to carriers for a six month period, timed to coincide with airline scheduling changes. (Conceivably, an airline could also "sub-lease" a slot to another carrier for part of that six month period, should the need arise.) By treating slots as a short-term leasehold, rather than as a permanent corporate asset, Congress would be re-affirming that slots are public rights and should be allocated accordingly. If the airlines were to pay for these slots and the proceeds went into the Airport Trust Fund, the public could be protected against fare hikes by paring back the current ticket tax.

Along these lines, an intriguing possibility that was raised during the House hearings last fall was to allow cities which are served from these slot-controlled airports to buy or lease slots, which they could then allocate to carriers willing to serve them. While this would be a departure from current practice, it might allow medium-sized communities to bid for service they might not otherwise receive, thus addressing a concern voiced by members of the Committee. We have not had an opportunity to examine this concept in enough detail to offer any firm conclusions about its desirability, but it is something for Congress to consider if the interim solutions in S. 1966 do not prove fully satisfactory.

This concludes my prepared statement, and I would be happy to respond to your questions. Thank you.

Senator KASSEBAUM. Thank you very much, Mr. Hitchcock.

Let me just start with you since you finished last.

Regarding the deadlock breaking mechanisms, I think everybody has some reservations about lotteries.

Have you given any thought to any other forms? Binding arbitration was mentioned by Mr. Barclay.

Do you have any particular observations on that?

Mr. HITCHCOCK. Well, I think the lottery or auction approach is something that would be useful.

Let me go back for a second and put the problem into perspective. I think Mr. Burnley mentioned the 1980 deadlock.

The problem then was that when they went to DOT, DOT said, in effect, "we are going to freeze the status quo." At that point the die was cast, and the incumbents said to themselves "what incentive is there to break deadlocks?"

I think, as Mr. Barclay indicated, you need some kind of incentive to make the airlines want to reach agreement. A lottery or auction would seem to be two approaches that do offer alternatives.

Senator KASSEBAUM. Have you analyzed AOCI's recommendation that Mr. Reilly was mentioning, with a partial auction. What do you think of DOT's belief that 25 percent at auction was too disruptive and too large a percentage?

Mr. HITCHCOCK. Well, 25 percent is better than 5 percent. But still, you have the problem that the airlines are still getting something for nothing.

As you will recall, Madam Chairman, we testified, I think last year, that you have the same problem dealing with international air routes. Here is something that is given to an airline for virtually nothing, and there have been cases where they turn around and sell them. The South American were sold from Braniff to Eastern; PanAm's Pacific routes also were sold at a hefty profit.

There is something wrong, again, with allocating basically public rights and letting airlines profit in the sales. You have the same problem here.

Senator KASSEBAUM. Mr. Reilly, of the airports that you represent, two of the high density ones, LaGuardia and Kennedy, appear to support the buy/sell proposal, I understand, and perhaps others do, too.

How do you analyze that? What is the thinking of the other airports that you represent?

Mr. REILLY. Well, we do represent a consensus opinion of all the major airports in the United States, including Chicago, the New York airports, but, of course, excluding the two Washington, DC airports which are owned and operated by the Federal Government.

We all firmly agree that there has to be some type of forced mechanism to break the deadlocks. We support the continuation of the airline scheduling committee where and when they can function.

What we are proposing is that only for those specific hours where the scheduling committee is in deadlock, we then to go a forced mechanism to break that deadlock. That is why we are proposing that 75 percent of the slots be kept, so that airlines can maintain a stable level of air service; but then, make it expensive enough for the incumbents, by the potential loss of 25 percent of the slots, that they will try harder to come to a unanimous agreement in the scheduling committee.

Now, whether it is 25 percent or 20 percent is certainly open for discussion.

I don't believe, if I may just reflect back on another comment you have made, that a pure lottery is of much value. By a pure lottery, as I understand it, the airlines would end up with whatever slots they happened to pick out of a grabbag.

Whether those lots would fit into any type of scheduling scheme they have in mind is probably very doubtful.

As far as arbitration goes, it sounds good, it sounds equitable. But the problem there, too, is that you always end up with halfway solutions. Under most arbitration—I think Mr. Burnley mentioned this from his personal experience—everyone generally has to give up half and no one really ends up with much of a schedule scheme left over.

This is why we feel that if a contender feels it important enough to have a particular slot schedule, he should be able to go ahead and pay for it.

What we are saying is that those 25 percent of the slots that would go up for auction would be selected from all the slots by lottery so that no one would know what they would lose. But, in order to obtain any of those 25 percent of the slots, you would, through the auction, have to pay for it.

Now that means that any carrier, including the ones that lost a slot, can come back and try in the auction to obtain that slot.

In our proposal, we have also opened it up to the communities. Anyone can bid on those slots.

Then, of course, in our concept we urge the use-it-or-lose-it and the other assurances that the slots would be used.

I would also like to mention in reflection on Mr. Burnley's comment about how he did not anticipate more airports going in under the scheme, I tend very much to disagree with that statement.

I feel that we are now at a crossroads, potentially setting a precedent for the future; and I firmly believe that we will have on the average of one airport a year, through the year 2000, potentially coming in under this rule.

A prime example tomorrow is Los Angeles. They are now butting their heads up against their 40 million passenger mark a year. They, too, may now have to start getting into restricting flight operations.

There is an industry task force that has been working for 2 years to try to develop airport capacity improvement schemes. One of the initial works they did was to evaluate airports that were coming on-stream with capacity problems. I think that study substantiates well more than one per year even between now and the year 2000.

It is an important and critical issue.

Senator KASSEBAUM. If I may just ask Mr. Gammon a question before I relinquish the floor, in DOT's December 17 rule, they did allow communities to buy slots. I would just like to ask you how this would work. For instance, if Wisconsin communities were able to negotiate at O'Hare, would that work?

Mr. GAMMON. Thank you for asking that question, Senator.

I do have a very definite opinion on that.

I would not advise any community in the State of Wisconsin or anywhere to buy a slot. It would be risky for a community.

The use-it-or-lose-it rulewould apply to the community as well as the carriers that own slots. But the communities do not have the necessary control over the use of that slot.

They are going to have to give it to an air carrier to use. That air carrier could then decide not to use it, and the community has lost its investment.

Senator KASSEBAUM. Could you lease them with certain conditions governing the use?

Mr. GAMMON. That would be a much more preferable from a community standpoint, if they could obtain that lease. But I do not think that is very assured, as to where they are going to get that and who they are going to get it from, and if they are going to get the right times slots that they are looking for.

The other thing I think this does is it puts the gun in the hands of the carrier. I am not saying they are going to use it, but it certainly indicates to me that a carrier could go to a community and say if you want to continue your air service into Chicago or LaGuardia, you are going to have to buy our slot, the one we currently have—if we are going to continue service.

It would be a round-about subsidy from the community to the air carrier.

So, not only would the community be subject to buying a slot if they want air service, but if the service is already there and the commuter feels that the community might buy it, I certainly don't think they would have any hesitation in asking that.

We do not like that provision. It was put in there apparently to alleviate concerns of some of the communities. But I certainly do not feel it does and would not recommend that a community buy a slot.

Senator KASSEBAUM. Now you seem to feel, Mr. Hitchcock, that that really would be an asset.

Mr. HITCHCOCK. Well, I think Mr. Gammon's points are all very well taken. I think, to respond, that a lease aspect is a better way of approaching it than perhaps the buy/sell.

Secondly, to the extent you move that away, you might have to deal with the use-it-or-lose-it problem differently for communities than you would if it is an airline that is starting up, when the slot goes back into the pot. Communities might take a little longer to scramble around before they can find a replacement.

That might be some way to harmonize it, but I think Mr. Gammon has raised some good points that will have to be considered if you incorporate that approach.

Senator KASSEBAUM. Thank you. Senator Exon.

Senator EXON. Madam Chairman, thank you very much.

I apologize to you, Madam Chairman, and the previous witnesses that I was not here when I should have been. We had a prayer breakfast this morning and that is what held me up.

We prayed for about everything over there this morning, which was good, except the matter of slots into airports. I bring you that bad news. Maybe it was just overlooked.

But this is a tremendously important proposition, and I congratulate you for holding this hearing, Madam Chairman.

For the life of me, I have not been able to understand why the Department of Transportation, and particularly the Secretary, is so unrelenting in the decision that she has made. It is nice that we have the option of coming to the Congress and asking them to overturn, to overrule, in a sense, what DOT has done.

I've thought it might have been better, and possibly the interested parties that have testified against the ruling that goes into effect April 1, unless overturned, might have appealed directly to the White House on this, to see whether or not the White House is advised or even interested in this proposition. For myself, I am afraid it has far-reaching effects for the future of the airline industry, and for service to smaller communities, which is a main and growing concern of mine.

But, looking ahead, assuming by some action we take that can overturn this action—and I say in all seriousness I am not sure that we are going to be able to get the job done—in essence this is not totally different than the attitude the Department of Transportation had with regard to the sale of Conrail. It seems to me that we have been rubberstamping the action by the department, which I certainly opposed, by selling the Conrail to the lowest bidder, and that this is just another situation, although bids are not being taken here at all. It is just a blanket rule that we are going to give airport slots to the major airlines who are fortunate enough to have them.

Now I do not criticize the major airlines for that. I would be delighted if I were operating as or an investor in a major airline to have this windfall come my way. The only thing I would say in behalf of the Secretary of Transportation in that area is at least she did try. She took bids. You might make an argument, as some have, that the Secretary, in the case of Conrail, after the bidding process, went into sensitive negotiations with what was the best and only "good" bid that came out of the advertisements and the extensive negotiations.

But, in any event, let's look forward just a little bit. Let's assume that we can overturn this. Let's assume that we are going to continue the small community Essential Air Service subsidy program until 1988, as presently scheduled. Then what do we do to protect small community airline service after that?

While you are here, I would like to get each of your brief comments about how you, in the future, would lick this slot problem that I suspect is going to be with us for some time to come.

I have often wondered—and I would like to have you comment on this and answer this question if you can—would it be worthy of consideration to reserve a percentage of the slots into major slotted airports, just off-hand maybe 10 percent, for the State aeronautics departments? They would be able to make those assignments, whether they are bid or have outright awarding of the contract? Should we take another 10 percent of those slots, perhaps, and have them under the airport authority or the manager of airports?

I say this because it seems to me that slotting is very important to the carriers, and it might be, if the State aeronautics department had some slots in airports in their States and if the managers or airport authorities had some slots in their States, they might be able to use those to some extent, not only to benefit the local airport and the local State, but also to use it as leverage against the major airlines—to say if you continue service to such and such a community, then we, in turn, would give you a slot; to use it as a bargaining leverage to more successfully manage an airport, especially with regard to service to local communities less than the service between two major areas, such as New York and Chicago?

Mr. REILLY. Senator, if I may at least begin a partial answer to your very sage question, slots were introduced a number of years back as a temporary requirement. Slots should be nothing more than a temporary requirement, because the end solution, obviously, has to be providing enough capacity to take care of aviation demands for the year 2000 and beyond.

There is only one solution, and that is providing sufficient capacity. That means we should be planning today to provide that capacity so we will never have to worry about slotting in the future.

Of course, that is the basic premise of the AOCI position: plan now for the capacity you need. There are a lot of people working on it and it is going to take a lot of money to do it. But it is certainly something that is in the best national interest.

Senator EXON. And it won't be ready by 1988, obviously?

Mr. REILLY. No, it won't.

That is where you come back to a need for some type of slot situation right now.

I must say, regading the allocation of some of the slots to the local communities, one of the arguments has been would you, in fact, be creating 450 little CABs around the country if each community has the authority to authorize all of the slots at its airport.

I do say, though, that the essential air service program is a bulwark of this whole concept. That concept has to remain in any final solution. There has to be the ability to provide service to the smaller communities.

I would like to add, as I mentioned very briefly in my summary today, that I do not see why the airlines have any real right, any proprietary right, to those slots.

The local community has built the airport, owns and operates the airport, and has put up the funding for that airport development. It has already purchase,d in most cases, the avigation easements and other legal requirements for landing rights. The *Griggs Supreme Court* case has already held the local community liable on that very basis for aircraft noise. I personally feel that if anyone does have a right to those slots, it is the local community.

Notwithstanding that fact, though, I think that what you are advocating has some merit, Senator Exon, and that is that some of the slots be allocated to the local community to make sure they are used in the best interests of the people for whom they built that airport.

I would not, though, like to see the airlines taken entirely out of the picture. They too do a lot of air service development work and they do know many of the markets exist. There should be further investigation of your concept, I think, to see where the merits and balance really lie.

Senator EXON. I did not imply that they should be taken out altogether. But what I am saying is that we could have slots reserved just for your operators and maybe some of the aeronautics departments of the State. That would still leave about 80 percent of them for the carriers under some variation of the arrangement we have now. It would help give some protection to, say, the State of Wisconsin for the local, smaller areas that could be crippled because of the failure of the essential air service program. At least in Nebraska, the local operators work very closely with the State aeronautics department and always have. I suspect that that is generally true in other States.

If you had those two entities controlling up to 20 percent of the slots, that would at least give them some leverage.

Senator KASSEBAUM. Is there any further comment? Mr. Gammon?

Mr. GAMMON. Yes, I have a comment.

It is an interesting concept. We have always believed, as Mr. Reilly mentioned, that the communities do have an interest in this and should have. They should not be excluded.

I don't think the current provision in the DOT rule provides for that interest.

However, I think whatever we do with regard to giving the community an interest, we are also reregulating. If we decide that 10 percent should go to the State of Wisconsin, or 10 percent to the City of Madison, or to Lincoln, or anywhere else, we are really, in effect, reregulating.

However, we also say, and I believe firmly, that we are allowing in this particular rule a form of de facto reregulation by allowing the airlines to concentrate in the hubs and to dictate where they want to go.

So I think Senator Exxon's idea has anappeal.

However, I am not so sure that it is the ultimate solution.

I agree wholeheartedly with Mr. Reilly. This is a temporary measure and should be treated as a temporary measure. We have to solve capacity problems in other ways.

We even question the need for the high density rule. As an example, in Chicago, we have no evidence presented to us. We know there is a capacity difficulty, but we don't know where it is.

Some of our air carriers agree that they would not mind opening the skies, if you may, to see where those problems are. If we do define the problem better, then perhaps going back to the scheduling committees as we have it now may not be a bad idea, at least as a temporary measure. We could still incorporate some of the things in your bill that we have said before, such as the deadlock breaking mechanism. I think the idea of binding arbitration in that deadlock breaking mechanism might work. But, again, treat it as a temporary measure.

Capacity improvements are the real solutions.

It is an interesting concept. We have not really thought the States being given some slots. But I do think that, in effect, we would be reregulating if we did that.

Senator EXON. Mr. Hitchcock, do you have a comment?

Mr. HITCHCOCK. I agree with a lot of what has been said before, so in the interest of time I would not repeat it.

The concept about shifting it to the State levels might just be shifting the battle. So, instead of Topeka competing with Lincoln, you might have Lincoln competing with Grand Prairie, and I am not sure whether Grand Prairie would come out ahead of Lincoln or not in any kind of competition.

Senator EXON. Well, they would have a better chance, it would seem to me, than with the major airlines, would they not?

Mr. HITCHCOCK. Well, that depends on the officials. I would leave that to you, Senator.

Senator EXON. Oh, officials at the local level are by far the best.

Mr. REILLY. May I add one word on that, Senator?

Unfortunately, you have your four constrained airports, two of which are in New York. Obviously if New York State was given the right to allocate 10 percent of those slots, I don't think that would really help Nebraska an awful lot.

That is one of the basic problems with the thought of the State aeronautics commission allocating slots.

Senator EXON. Oh, I am sure it wouldn't, and it was not meant to be a panacea.

What I am trying to do is to come up with some better way.

It seems like it would be quite easy to come up with a lot better way than what that Department of Transportation has come up with to satisfy this problem, which I don't think is a solution at all, except for more concentration of power and money in the major airlines.

I don't want to pick on them, but I just don't think it is fair.

I would agree that it would not be a major point. It just seems that we ought to try to explore all possible ideas to diversify as much as we can. I would not agree with you, Mr. Gammon, that this would necessarily be reregulation.

Any time you mention that term, either with the railroads or the airlines, it just sends everybody up through the roof. I am one of those who do not think that we had created a panacea when we had total deregulation, but I was not suggesting that as a reason for reregulation, rather as a way to make some of the slots used to better manage the airport from the manager's standpoint.

You are going to have this situation until we have enough space to land planes in the New York and Chicago areas. Then slotting would not be a problem.

I suggest, though, that it is probably always going to be a problem, even if we had all the facilities that we need to land all the planes that want to land at O'Hare, because after you get that situation, then you're going to have them saying we want to land our planes between 9:00 and 11:00 o'clock in the morning.

I don't know that there is a magical way that we are going to cure this, but let's keep trying to explore the different options and maybe come up with something better than the Department of Transportation has, which would appear to me to be rather easy.

Mr. GAMMON. I do agree with you on that point, and I do think it is worth some consideration.

I would like to make a point, if I may. The provision in the rule stipulating 56 seats tries to solve the same problem. We do not believe it does because it makes it difficult for the medium-sized, closer-in communities that were used to perhaps 100 seat airplanes to gain access, that is going to be somewhat limiting.

So we feel that many of the provisions in here will not accommodate the closer and the smaller communities.

We think that they definitely have to have an interest in this.

Senator EXON. Thank you.

Thank you, Madam Chairman.

Senator KASSEBAUM. Thank you. Senator Pressler.

Senator PRESSLER. Thank you very much, Madam Chairman.

I do have some questions and I would like to read a brief statement from my State's point of view on this buying and selling of airport operating rights.

The proposed rule to permit buying and selling of operating rights at high density airports raises serious concerns about the potential damage to small city airports, like those in my home State of South Dakota.

I am also concerned that this rule may affect air transportation safety.

Permitting airlines to buy and sell landing rights at the four high density airports, O'Hare, Kennedy, LaGuardia, and National, would require the airlines to make a considerable capital investment.

The Office of Management and Budget estimates that the cost of the prime time slot at one of these airports is between $500,000 and $1 million.

If an airline must pay that much money for a landing slot, it will be forced to focus its operations on well-travelled, more profitable routes between large cities, at the expense of routes between small cities and large cities. For example, if an airline that serviced the Minneapolis to Sioux Falls corridor paid $500,000 for landing rights in Chicago, it would probably be forced to drop the Sioux Falls route and, instead, fly a higher density route from Minneapolis to Chicago in order to recapture the capital outlay.

The loss of operations and the accompanying revenues could cripple many of our smaller airports and further diminish air transportation to and from smaller rural communities.

I opposed airline deregulation when Congress enacted that legislation a number of years ago. My concern has always stemmed from the impact of deregulation of smaller airports in the rural areas of the country. My concerns were justified.

Since deregulation, the upper Midwest region has suffered considerably from service cutbacks and high fares. Since deregulation, the major commercial airlines have discontinued service to low density areas, and replacement service has been difficult to find.

I fear the proposed rule will only accelerate and perpetuate that abandonment process.

Permitting the buying and selling of operating slots also raises some potential safety concerns. If traffic is diverted from low density routes to high density routes, as airlines attempt to recover the expense of buying slots, the potential for air traffic accidents could increase by aggravating already congested conditions on these routes.

I congratulate the distinguished subcommittee Chairwoman for holding this hearing. Her initiative in introducing legislation, which I cosponsored, to reconsider the proposed rule is commendable. I will continue to support her efforts.

We must send a clear signal that some other method needs to be developed to allocate these operating slots. These operating slots are public property, not private property. The airlines did not buy their slots.

It is unfair that these airlines should realize a windfall profit on slots they never paid for. I hope we will be able to explore possible alternatives to this rule during today's debate.

I would like to ask this question to members of the panel. I know that John Hoare, the manager of the Sioux Falls Airport has been very helpful in analyzing this.

My question is this. Is it not true that there would be a very good chance that, if an airline that serviced the Minneapolis to Sioux Falls corridor paid $500,000, just imagine, for landing rights in Chicago, it probably would be forced to drop a lesser dense route, such as the Sioux Falls route, and instead fly a higher density route from Minneapolis to Chicago in order to recapture the capital outlay?

Is that not true? Would that be your judgment?

Mr. GAMMON. I think you are probably correct.

I go back to why we were sold on the idea of deregulation. It was the fact that we could increase the efficiency of the system by increasing the frequency of flights, in some cases, and perhaps decreasing in others.

We were given several examples of that.

I am not going to argue the pros and cons of deregulation, but I think if we were sold deregulation on that argument, then we are changing the argument now. We do not have the efficiency of increasing the frequency in some markets with smaller airplanes and perhaps putting the larger airplanes where they belong in other markets.

It is our feeling that with this slot rule, we have destroyed many of the efficiencies that we had gained in the past.

Your example is, I think, one very definite example of that inefficiency.

Mr. REILLY. Senator, I think basically your comment is correct.

I would suggest, though, that there are possibilities to get around that. One is that we are talking about capacity congestion during a peak hour. There is the potential for the regional airline to slide to the off-peak hour, which might be the hour before or the hour after. That might mean a little longer time in the connecting passenger's wait at the airport.

Second, I think that, with deregulation, we have seen more hubbing. There are the long-haul nonstops. But, on average, even flying from the Northeast to the Southeast now, many people will find themselves hubbing at Charlotte, if you are flying Piedmont, or Baltimore. There are a number of different options there.

I think the hubbing concept from a smaller city in South Dakota might get you with one stop to your major points. That, too, is more of an inconvenience. But at least the service is still there.

I think the true answer, though, if we are faced with solving the buy/sell slot problem today is to assure that there are enough essential air service slots to take care of the major needs of the smaller communities, particularly in the Midwest States.

Mr. Hitchcock. Senator, I would agree with your suggestion that there could be more competitive pressure to use the slots where it could do the most good or make the most profit. But I think, as Mr. Reilly points out, there are a number of hubs that have been developing, alternative hubs, so that not everyone has to go through O'Hare anymore, and also the fact of sliding to off-peak hours may be useful as well to deal with the particular situations.

You already have a set-aside for essential air service, a set-aside for commuters, and beyond that, if you want to start set-asides among the air carriers, that gets a lot trickier. But there are some protections in the system now, and in some senses there are solutions developing.

We oppose the rule and the idea of letting the airlines make this kind of sale. But there are alternatives short of that, and also as a way of improving the current system, as we indicated in our statement.

Senator Pressler. Thank you very much.

Senator Kassebaum. I want to thank the panel very much for its interesting comments.

Our next panel will consist of Mr. Cohn, Mr. Overbeck, and Mr. Aste.

It is a pleasure to welcome the next panel, which I am sure is very anxious to be able to have equal time on this issue. Let me introduce the panel: Mr. Robert E. Cohn, general counsel, People Express; Mr. Gene Overbeck, senior vice president, Government affairs, American Airlines; and Mr. George Aste, vice president, Government and international affairs, United Air Lines.

Mr. Aste, I believe you have a plane to catch shortly, is that not right? Would you like to go first?

## STATEMENTS OF GEORGE J. ASTE, VICE PRESIDENT, GOVERNMENT AND INTERNATIONAL AFFAIRS, UNITED AIRLINES; ROBERT E. COHN, GENERAL COUNSEL, PEOPLE EXPRESS; AND GENE E. OVERBECK, SENIOR VICE PRESIDENT, GOVERNMENT AFFAIRS, AMERICAN AIRLINES, INC.

Mr. Aste. Thank you very much, Senator. I appreciate that.

I do have a written statement.

We certainly have been a long-time proponent of the buy/sell concept because we believe the marketplace is a more efficient allocator of almost any regulatory process than the Government itself.

We have two compelling, specific reasons why buy/sell should be permitted.

First, buy/sell will afford incumbent carriers, both large and small, the opportunity to grow at airports where they are now otherwise stymied by capacity limitations.

Second, buy/sell will give new entrant carriers access at capacity controlled airports to serve the markets of their choice.

The DOT Final Rule, effective April 1, accomplishes these two objectives. The public interest will be well-served if the rule is allowed to take effect on that date. S. 1966, on the other hand, has the potential to cause substantial disruption of present service patterns and inflict serious economic penalties on incumbent carriers.

The subcommittee has asked us to address a number of specific issues related to buy/sell, and I shall briefly respond to each one of those issues.

First, the so-called "windfall to incumbents" issue:

Incumbent carriers already have the use of the slots. But, buy/sell does not create a new asset on the balance sheet of the incumbent carriers or convey permanent ownership of the slot.

In 1982, when the FAA permitted buy/sell for a period of time, United "bought" slots and the cost of those slots was treated as an operating expense, not a capital acquisition. Then, as it will be when buy/sell is again permitted, the purchase of a slot will be just another cost of doing business, no different from other requirements, such as purchasing aircraft or leasing terminal facilities.

As a holder of slots at all of the high density rule airports, United has made major investment decisions for airport construction. At O'Hare, for example, United has in place over $74 million in facilities, paid for with internal corporate funds. We have under construction a $350 million new terminal. Surely, those concerned that large incumbent carriers will reap windfall profits if buy/sell is permitted do not seriously think those carriers are going to sell large numbers of slots for profit and then abandon their huge capital investments at the high density airports. Such actions will not occur. They make no economic sense.

If we refuse to accept the necessity to leave the present allocation of slots in place, then we must accept that the alternative to grandfathering slots, that is, reallocating all or a portion of incumbent slots by a lottery or some other method, would cause serious disruption of established service at the high density rule airports. A taking of just 5 percent of United's slots at O'Hare, for instance, would result in the cancellation of 34 flights, hardly an insignificant number.

We agree with DOT that grandfathering on a one-time basis is absolutely essential for stability in services provided to the public.

Next, as to whether new entrants will have a meaningful and equitable opportunity with buy/sell to gain access to these airports, there seem to be only three ways to guarantee new entrants access.

First is to create new capacity to accommodate all comers. This is clearly the preferred way, but FAA has not built capacity to meet demand and this clearly best solution appears unattainable.

Second is to arbitrarily take away slots from incumbents and give them to new entrance—an inequitable solution which I will address in a moment.

Third is buy/sell, which will produce slots for sale and guarantee access to all comers.

The price will be equitable since neither seller or buyer will hold or purchase a slot for more than the slot is worth to produce a profitable operation.

Furthermore, as evidenced by the number of carriers who would be new entrants at high density rule airports and who also support buy/sell, the possibility that the slots would not be available is not a realistic scenario.

As to the concern that small or medium-sized communities would suffer reduced service, we agree with the conclusion of the Council of Economic Advisors.

In 1985, Council member William A. Niskanen said that the charge that small communities would lose air service "fails to recognize that the airlines that have slots now have the incentive to make the best possible use of the slots at the moment, given their current route structure. Changing the process for allocating these slots doesn't change that."

Service to small and medium cities is not preserved because of the current slot allocation process, but by the ability to produce profits. Also, keeping separate categories of slots for commuters and air carriers ensures capacity at each capacity controlled airport for aircraft suited to shorter haul, lower passenger volume markets.

Lastly, a few observations on S. 1966.

The approach taken in this bill will not remedy the schedule committee problems. While we support the use it or lose it requirement to eliminate pocket slots and prevent monopolization, we oppose the requirement for DOT to develop a mechanism which would automatically reallocate slots unless the scheduling committee unanimously agrees on another allocation.

It is intended that this proposal will give the airline members of each scheduling committee the incentive to accommodate the needs of new entrants. But the bill requires that each scheduling committee will be made up of incumbents and new entrants.

In our view, the requirement to include new entrants guarantees that unanimous consent will never be reached, and some percentage of slots will be taken away and transferred every time a scheduling committee is required to meet.

Both small incumbents wishing to expand and new entrants would have every incentive to deadlock the committee and get slots from the forced redistribution of larger incumbents' slots.

This concept apparently assumes larger incumbents with their huge investments and extensive multi-community service patterns have no rights or lesser rights than small incumbents and new entrants. There appears to be a presumption that anywhere from 5 to 25 percent of an incumbent's slots are used for some other purpose than providing useful public services and can be taken away without inflicting any substantial economic penalty. That presumption is at war with economic reality.

We ask the subcommittee not to proceed with S. 1966, but indeed to let the DOT rule go into effect on April 1.

Thank you very much, Madam Chairman.

Senator KASSEBAUM. Thank you very much.

Can you stay through for some questions?

Mr. ASTE. Yes, I can.

Senator KASSEBAUM. Good. Mr. Cohn.

Mr. COHN. Thank you very much, Madam Chairman and Senator Exon.

I am general counsel of People Express Airlines, and I find it very interesting that I am sitting here, next to United Airlines and American Airlines and am articulating very much a position in favor of the DOT proposal.

I think it is important, Madam Chairman, to focus on the fact that we come at this position through an entirely different, I guess, end of the tunnel. We view ourselves essentially as being the have-not carriers, at least have been over the last several years attempting to first fight our way into the high density airports and then increase what limited slots we had there.

We have spent a lot of time fighting the scheduling committee process in a way that has been totally inadequate. We have given lots of thought to the kinds of alternatives that would be available to the scheduling committee process, including the concepts that are imbued in S. 1966, in the auction, in the lottery process, and in the buy/sell scheme.

We have essentially reached the conclusion that, while not perfect by any means, the DOT proposal, which has a combination of buy/sell, a market based type mechanism, with a withdrawal process, provides a proper balancing in our view to allow new carriers and to allow carriers like People Express the ability to expand, without having the inherent delays and costs—and the delay costs are staggering—that are inherent in any regulatory process.

But, before I get into that I would like, at the outset, to address the real solution to this problem, and I am not being disengenuous by saying it or even facetious or facile.

I think the real solution is that we don't need high density airport regulations. We don't need slot controls.

One of the fundamental assumptions on which this whole tribunal here has been called assumes the validity of the high density rule. In fact, there has never been a justification—except perhaps in 1968, when they were imposed temporarily, and I underscore "temporarily"—there has never been a significant justification for the continuation of the high density rule.

Why is it that the FAA has found and determined and stated that the air traffic control system remains as the failsafe check on the airline operations at every other airport in this country, including airports that have significant numbers of operations, yet it doesn't work for JFK during certain hours, for LaGuardia, for O'Hare, and for National?

The fact is that it does work.

The air traffic control system, the flow control process, is the perfect check and balance that will make sure that only that amount of airplanes that have to go into the air corridors are going to do that. There is no reason for a high density rule.

I would love for the FAA and for this committee to focus on whether or not we ought to maintain high density airport regulations, because I think that will solve all of our problems.

But, so long as we have slot controls—and it looks to me that the FAA, at least for the near-term, intends to continue slot controls at these airports—so long as we have slot controls, it is our view that the buy/sell concept is the most efficient device, consistent with the statutory objectives which ought to place maximum reliance on competitive market forces. We recognize that it is a fixed entry concept that you have, that the FAA is essentially establishing a scarce resource, a slot. That you are not dealing with an open-ended marketplace. But yet, there are allocation mechanisms within that regulated construct that can rely on competitive market forces.

Clearly, any approach that continues to rest as a fundamental resolution on the scheduling committee is doomed to failure. The scheduling committee has essentially reached the point of total dysfunction, and not just because we have buy/sell pending. It has not functioned since deregulation. Since there has been major efforts by new carriers to get into high density airports or to expand their services, the scheduling committees have failed.

They failed in 1980, as Mr. Faberman and Secretary Burnley pointed out before because you had a new carrier, New York Air, that wanted desperately to get into LaGuardia Airport.

It has continued to fail at National Airport, when carriers like People Express and other carriers have attempted to gain access unsuccessfully.

Now, we were fortunate because there was a six week window in 1982 that allowed us to enter into a buy/sell transaction that got us entry into National Airport. I'd still be knocking on the door today trying to get into that airport for one or two slots, and I guarantee you that those efforts would have been unsuccessful. But we paid approximately $2 million for 10 slots in 1982 at National Airport, as a result of which we have increased competition there and lowered fares and provided significant benefit to the public.

It would not work to that efficiency on that kind of dynamic process, where you essentially have forces of supply and demand determining how those slots are going to be moved, the fluidity of those slots. It won't work if you deal with the scheduling committee when you require unanimous approval by carriers who have to give up what they see to be something of value, without getting anything back.

Certainly, I don't want to rest our air transportation system on the roll of the dice, which is what we are talking about in a lottery system. That is not going to provide any public benefit whatsoever.

I think the 1982 experiment, Senator, has in fact proven that buy/sell works, that the deep pocket carriers are not the carriers that will benefit—because we were certainly not a deep pocket carrier when we were less than a year old in 1982 and managed to buy into National Airport. We view it as just another capital asset that a carrier will have to obtain in order to gain entry into the system, whether it is aircraft, whether it is airport facilities, or whether it is a slot under a lease or buy arrangement. That is what that carrier is going to have to do to get into the system, or go to another airport.

I notice that my time is up. I would like to have my written presentation accepted into the record, and I will be available for questions when we are completed.

[The statement follows:]

## STATEMENT OF ROBERT E. COHN, GENERAL COUNSEL, PEOPLE EXPRESS AIRLINES, INC.

Madam Chairman and members of the Committee, I am Robert E. Cohn, General Counsel of People Express Airlines, Inc. People Express appreciates the opportunity to discuss with you the important issue of whether or not the United States Government should allocate take-off and landing slots at high density airports through a marketplace mechanism or through a regulatory/administrative mechanism. People Express unqualifiedly supports the precept that in its administration of the aviation industry the U.S. Government should place maximum reliance on competitive market forces and should employ market-based mechanisms to allocate scarce resources. Therefore, we do not support S. 1966, which will continue administrative allocation of airport slots.

At the outset, People Express believes current government efforts are improperly focused on mechanisms to restrict air carrier operations, such as high-density airport regulations, slot controls, and "voluntary" agreements on schedule adjustments. Rather than limiting airport capacity, the federal government should direct its energies and resources to expanding airport capacity and creating an environment in which the free market can flourish and in which airline managers possess the freedom to provide services consistent with consumer demand.

It is People Express' strongly held view that slot controls imposed through the High Density Airport Rule are not necessary to maintain a safe and efficient air transportation system. As the FAA has repeatedly emphasized:

> "Safety is assured by the air traffic control system. If more airplanes are scheduled to operate at National (or any other airport) than the system can handle for a given period of time, the air traffic system will delay operations until they can be accommodated, either by requiring aircraft to circle in the air or wait on the ground." Notice 83-3A, p. 13, Docket 21955.

With the air traffic control system acting as a check on airline operations, there is no need to impose artificial slot restrictions which, on any given day, at any given hour, under any given set of operating conditions, will generally limit service below the level of operations that could easily be accommodated by the air traffic control system.

If safety is at all times maintained by the FAA's flow-control procedures, what then is the purpose of slot restrictions? The FAA may argue that slots are necessary to maintain the "efficiency" of the air transport system; however, efficiency is not a proper concern of the FAA. "Efficiency" is another name for "economics;" therefore, slot allocation is economic regulation pure and simple. The Congress cannot and must not allow the FAA to fill the vacuum left after CAB sunset by regulating airline scheduling decisions through the guise of its authority to control the "efficient" utilization of the airspace.

If the object is to prevent delays and ground congestion, People Express submits that the Airline Deregulation Act mandates a "hands-off" approach. Delay is not a safety issue but an economic issue. An air carrier's decision to provide a particular level of service, at a particular airport, during a particular hour will largely depend on purely economic considerations, the most important of which include demand and costs. The Airline Deregulation Act left these judgments to airline management not to the federal government. If in the absence of slot controls, the air traffic control system produces delays—a result People Express believes will not occur—then the airlines and consumers will make marketplace decisions concerning their willingness and ability to withstand such delays. At bottom, these are economic decisions which should not be controlled by the federal government. Therefore, People Express urges this committee to encourage the expansion of the air traffic control system so that slots may be eliminated entirely.

The whole point of this discussion is to shift the focus away from how the government should regulate slot allocations to the more essential issue of eliminating slot controls altogether. Nevertheless, so long as the High Density Rule remains in effect, any vehicle employed by the DOT/FAA to allocate slots, by law and sound public policy must rely primarily on marketplace rather than regulatory mechanisms. We thus strongly support the FAA's Slot Allocation and Transfer Rule permitting the transfer of slots for any consideration.

By law, the DOT/FAA must follow the policies and precepts of the Airline Deregulation Act which are incorporated into Section 102 of the Federal Aviation Act, 49 U.S.C. § 1302(1), (4) (1985). Among the most significant policy standards included in the Airline Deregulation Act is the requirement that DOT/FAA place "maximum reliance on competitive market forces" and foster the encouragement, development, and maintenance of an air transportation system relying on actual and potential competition to provide efficiency, innovation, and low prices, and to determine the variety, quality and price of air transportation services." 49 USC 1302(a)(4), (9).

People Express believes that the FAA's Slot Allocation and Transfer Rule (buy/sell) is the most efficient device consistent with these statutory objectives. Permitting the transfer of slots for any consideration will establish economic incentives for carriers holding marginally economic or uneconomic slots to relinquish those slots to carriers better able to use them. In addition, the "use or lose" provisions of the buy/sell rule ensure that underutilized slots (those not used sixty-five percent of the time in any two-month period), will be recalled by the FAA and reallocated by lottery. Thus, the freely available slot transfer mechanism, in combination with "use or lose," will ensure over time that slots will be allocated in the most efficient manner, and obtained by those carriers that can use them most productively.

In contrast, S. 1966 retains the system of allocation of slots by airline scheduling committees, despite the committees' failure to allocate slots successfully for many years. In addition, S. 1966 adds yet another layer of government regulation, a mandatory deadlock breaking mechanism. People Express submits that the allocation system proposed in S. 1966 will not produce the same economic efficiencies and slot movements as the buy/sell rule.

The airline scheduling committees have reached the point of total dysfunction. Because allocation of slots by the committees requires unanimous approval among all members, the committees are doomed to failure. Where all presently available slots are allocated, and no new slots are being created, no carrier will voluntarily release a slot for use by a new entrant or a competitor desiring to expand service. Without an economic incentive to release slots, incumbent carriers will hold on to slots as a means to enhance their monopoly value and preempt competition. Thus, the committees are little more than government created cartels which permit tacit, if not direct collusion among the incumbents by exercise of their veto power over competition and new entry. To appreciate the excruciating perversity of this process, one must sit through the mindless sessions spanning days and weeks during which every conceivable allocation "exercise" is raised and then rejected by one or another airline.

Although S. 1966 contains a provision requiring the FAA to allocate a "reasonable percentage" of slots by lottery in the event of committee deadlock, the deadlock breaking mechanism cannot alter the dynamics of scheduling committee negotiations. It is unclear that the threat of FAA allocation will be sufficient to encourage incumbents to release their slots "voluntarily" to new entrants. In the past, although the FAA stood ready to impose administrative allocation in the case of committee deadlock, various airline scheduling committees were unable to reach resolution. Indeed, the perversity went so far that the airlines were unable to agree unanimously that the committee had even reached an impasse! Thus, the incumbent carriers continued their *status quo* operations in between recessed scheduling committee meetings, existing carriers were denied growth opportunities, and new entrants were denied access to high density airports. Moreover, even if S. 1966 assured the FAA a right to allocate slots in the case of an undeclared deadlock, all carriers would still be faced with untenable delays in order to allow the scheduling committee process a reasonable time to reach an impasse, and to allow the FAA to invoke the deadlock regulatory mechanism.

As we see it, the fundamental flaw of S. 1966 is that it would substitute a regulatory process for a market-based process that will achieve greater access for *all* carriers faster and more efficiently.

While the FAA's final rule is not perfect, it does reasonably balance the various conflicting interests, including the need for movement of slots to more productive users and access for new entrants, without substantially disrupting existing service patterns and airport investments.

A truly market oriented approach might involve a complete reallocation of existing slots through some kind of competitive process, such as an auction or lottery, as well as the creation of an after-market for slot transfers. However, such an allocation procedure brings with it significant legal, economic, and political difficulties. The FAA probably lacks legal authority to auction slots in the absence of legislation allowing it to collect and dispose of the proceeds. See Independent Offices Appropriations Act, 31 U.S.C. § 9701 (1983). In addition, complete redistribution by lottery, while arguably within the FAA's legal authority, could significantly and adversely affect existing patterns of service and airport investments. Therefore, grandfathering a majority of current allocations is the most practical method of initial allocation.

The objections commonly raised to grandfathering the existing slot allocation are that grandfathering will provide a windfall to incumbents and create barriers to new entry. Such criticism overlooks the fact that incumbent carriers already enjoy a windfall that produces monopoly rents by virtue of the diminished level of competition at slot-controlled airports; in short, they are today reaping windfall profits as a result of the ability to charge higher fares at the slot-controlled airports. The ability to sell slots will only slightly increase that value; most of slots now held by incumbents will be retained to continue current operations, rather than sold. As several economic studies have shown, the scarcity value of slots at high density airports is reflected in higher consumer prices. See, "Deregulation of the Airlines," by Elizabeth E. Bailey, David R. Graham and Daniel P. Kaplan, M.I.T. Press, at 161, (1985); "Efficiency and Competition in the Airline Industry," Bell Journal of Economics, Spring 1983. To illustrate, the air fares to and from LaGuardia are, as a rule higher than the air fares to and from Newark in the same city pair markets. Similarly, air fares to and from Washington National are higher than air fares to and from Dulles and Baltimore/Washington International in the same city pair markets. People Express submits that this phenomenon is directly attributable to the lack of competition as a result of slot controls.

Increased access by new entrants to slot-controlled airports will increase competition and reduce fares. However, even if incumbents will receive an economic benefit from slot sales under the buy/sell rule, this one time gain is a small price to pay for the creation of a marketplace that will give all carriers, including new entrants, opportunities to access slots they would not get otherwise.

Nor will the buy/sell rule create a barrier to new entry. First, the FAA has issued a Notice of Proposed Rulemaking ("NPRM") on Initial Withdrawal and Redistribution of Slots which proposes to create a slot pool equal to five percent of all available slots at each airport; slots will be created through "use or lose" or withdrawn from incumbents if necessary. These slots will then be allocated by a lottery in which new entrants will be favored.

More importantly, new entrants will be able to buy slots in the aftermarket on the same terms as the incumbents. People Express submits that it is the lack of such an aftermarket slot transfer mechanism which has created a barrier to entry in the past. Without the buy/sell option, new entrants would continue to be dependent upon the generosity of incumbents. However, under the buy/sell rule, new entrants can purchase enough slots in desirable time periods to begin economically viable operations. No other slot allocation procedure, whether administrative or lottery, could assure a new entrant that it could obtain the number of slots it requires.

Even if the buy/sell rule slightly increases the cost of new entry, it is still preferable to government allocation of slots. An airline seeking entry into the industry is faced with a variety of capital requirements and a scarcity of many important resources. Airplanes, airport facilities, and other necessary equipment are not only expensive, but most are in the hands of incumbents. Yet no one has proposed government allocation of other aviation resources. Whether it is slots, airplanes or airport facilities, People Express believes that the marketplace will allocate these scarce resources most efficiently.

Furthermore, well-capitalized new entrants will be able to obtain financing for their slot purchases just as they finance other facilities and equipment purchases. For example, in 1982, People Express was able to purchase 10 slots at Washington National Airport for approximately $2 million. Although People Express was, at that time, a small evolving new entrant, it had no difficulty raising the cash necessary to consummate the transaction. As a small fraction of the total cost of entry, the cost of slots will not create a barrier to entry into the airline industry.

Finally, it is not critical that new entrants begin their operations at slot-controlled airports. For every high density airport, there is another airport conveniently located which may be used by both new entrants and incumbents. Consumers will be willing to travel a few miles to take advantage of lower fares and outstanding service. People Express capitalized on this strategy by developing a powerful presence at Newark Airport rather than at LaGuardia or JFK, and by moving into Baltimore/Washington International Airport before attempting to gain access to Washington National Airport. Thus, even a complete lack of access to slot-controlled airports does not impair effective entry into the industry.

The benefits of buy/sell have already been proven in the marketplace. During an approximately six week period in 1982 when such transfers were authorized by the FAA, over three hundred slots were traded or sold. These transactions allowed airlines to enter new airports where they might otherwise have been excluded, and allowed existing carriers to expand their operations despite severe slot restrictions. People Express, in particular, which at the time was a small new entrant, was able to gain relatively significant access to Washington National Airport as a result of the buy/sell authority. People Express purchased ten daily slots at Washington National which allowed it to operate a reasonable pattern of non-stop service between Newark and Washington at unprecedented low fares.

People Express could never have gained that access through the scheduling committee. People Express has essentially been frozen at its initial slot level and, with the exception of two slots it received two years ago, has been unable to increase Washington/National-Newark services despite the fact that load factors on its services are consistently among the highest of any airline serving that airport.

People Express' experience and the experience of other airlines participating in the limited buy/sell experiment in 1982 conclusively prove that the buy/sell concept works and that it is not just the "deep pocket" airlines that will benefit. Indeed, without the economic incentive created by the ability to transfers slots for consideration, incumbent carriers at high density airports will continue preemptively to hold their valuable slots to prevent other carriers from competing against them.

Under any analysis of sound public policy, allowing airlines freely to negotiate transfers of slots is superior to having the federal government intrude into the slot allocation process either by grant of antitrust immunity to the anticompetitive scheduling committees, or direct administrative allocation. Authorizing slot transfers does not mean that the slots are automatically considered "property" rights. The FAA and the courts have made it clear that "slots are actually restrictions on the use of property-airplanes; not property in themselves." In Re Braniff Airways, Inc., 700 F.2d 935, 942 (5th Cir.) (1983). Nevertheless, slots do have an economic value (an opportunity value) that creates a market demand. There is nothing sinister, illegal or evil about a system that allows an allocation of the demand to function in a competitive marketplace regime. Eliminating the existing anti-competitive closed-door system and opening high density airports to competition will, in People Express' view result in lower fares and a greater variety of service that will be more reflective of consumer demand. S. 1966 cannot produce these benefits to the traveling public.

## CONCLUSION

In conclusion, the theme of People Express' presentation today is to urge the federal government to stay out of the business of regulating the airline industry to the maximum degree possible. In all aspects the government should regulate through whatever mechanism most replicates the competitive marketplace. With respect to the airport slot issue, People Express believes there is no need to impose high density regulations and, therefore, there is simply no need for slots. However, so long as slot controls exist, People Express supports allocation of slots through the "buy/sell" mechanism.

Senator KASSEBAUM. Thank you. Your full statement will appear in the record. Mr. Overbeck.

Mr. OVERBECK. Thank you, Madam Chairman.

American Airlines believes the buy/sell rule ought to go into effect. We don't pretend that it is a perfect rule, but there simply are no perfect solutions to the problems we face.

In the limited time available, I would like to expand on just one of the points that we tried to make in our written statement, and that has to do with the significance of accommodating new entrants at the airports in question.

Your bill, S. 1966, makes what appears to us to be a statutory determination in section 3(d) that allocating a slot to a new entrant will always be more desirable from the standpoint of the public interest than allowing an incumbent to continue to use that slot.

Now, although we admit to some bias on this issue, we simply cannot agree with that conclusion.

Perhaps it would be helpful to consider an example, particularly in light of the comments that Senator Pressler made when he was here.

When you add up all the unsatisfied slot requests at O'Hare, LaGuardia, and Washington National, you will find that McClain Airlines is requesting more slots than any other aspiring new entrant. So I suggest we use McLean as our example.

McClain wants 32 slots: 20 at O'Hare, 6 at LaGuardia, 6 at Washington National.

O'Hare is apparently to be the base of its operation.

McClain first requested slots at O'Hare in early 1984, a full 2 years ago. In April, 1984, McClain was allocated 20 slots by the O'Hare scheduling committee. McClain was never able to use those slots, and finally lost its rights to them in September 1984.

Less than 2 weeks ago, McClain filed comments with the FAA opposing the buy/sell rule. In those comments, McClain admits that its financing is still not in place, that its aircraft have not yet been overhauled or refurbished, and that its employees have not yet been trained.

Now, if McClain gets the 32 slots it is requesting, I don't believe there is any question that it will not be able to use them for a substantial period of time, if ever.

Whether they are used or not, if 32 slots are given to McClain, some part of them will have to be taken away from an incumbent, and certain existing services will have to be eliminated.

It is most unlikely that services will be reduced in high density, major city markets, because frequency of operation is all-important in those markets. It is much more likely that services to mid-size communities will be reduced or eliminated.

In our own case, if we had to give up slots at O'Hare, service to points such as Grand Rapids, Fort Wayne, Omaha, or, indeed, Wichita, would clearly be at risk.

If McClain finally does both get and use the 32 slots, where will it operate? Let me quote from McClain's FAA comments of just 2 weeks ago. This is a quote: "McClain is seeking a very small market share of the large, frequent flyer markets on a point-to-point basis between the major cities, including Chicago, New York, and Washington."

In conclusion, we believe that some very subjective judgments have to be made in the allocation of slots. Whose services are more important and whose services are less important from the standpoint of the public interest? Those judgments simply cannot fairly be made by a Government agency.

The FAA proposal would make an initial provision for new entrants who are ready to operate and would allow the marketplace to govern thereafter. We believe, on balance, that this makes a great deal of sense.

Thank you.

That completes my remarks.

[The statement follows:]

## STATEMENT OF GENE E. OVERBECK, SR. VICE PRESIDENT, GOVERNMENT AFFAIRS, AMERICAN AIRLINES, INC.

American Airlines Inc. supports the proposal of the Federal Aviation Administration to permit airport slots at four high-density airports to be bought and sold in the marketplace. In our view, the buy/sell concept ought to be given a fair trial commencing April 1, 1986, as proposed. We believe that Congress should stay its hand for a reasonable period of time thereafter so that an evaluation can be made of how the rule works in practice. If implementation of the rule gives rise to material inequities, and if the FAA is unable to eliminate those inequities through appropriate modifications to the rule, then it would be appropriate for Congress to intervene.

### SCHEDULING COMMITTEES

The reason for implementing the FAA's proposed rule—or any alternative rule—is the current state of gridlock that exists because scheduling committees have been unable to agree upon methods of reallocating slots at the four airports in question. The demise of the scheduling committee concept is unfortunate in the sense that these committees performed their functions with commendable efficiency for a number of years.

There is general agreement that the breakdown of the scheduling committee process was primarily the result of two factors: First, there was no use-it-or-lose-it rule that would require an airline holding unused slots to make them available for use by other airlines. This was a particularly severe problem at O'Hare in the spring of 1985. According to American's best estimate, in excess of 100 slots were going unused at that time. The second reason for the inability of scheduling committees to function was the lack of a mechanism for breaking deadlocks.

While it may be possible to breathe life back into the scheduling committees by adoption of a use-it-or-lose-it rule and a deadlock breaking mechanism, there can be no guarantee that these committees can ever be made to work again. We believe that, on balance, the alternative selected by the FAA is a superior one.

The FAA's proposed rule incorporates what appears to be a workable use-it-or-lose-it provision. Thus one of the factors that has led to the current unsatisfactory state of affairs will be eliminated. However, in lieu of proposing a mechanism for breaking deadlocks of the scheduling committees, the FAA has decided to rely upon market mechanisms as the means for handling future reallocation of airport slots.

American Airlines supports the FAA's decision in this respect. Its proposed rule is not a perfect one. Indeed, American has suggested a number of changes and refinements with respect to certain technical aspects of the proposal. However, we fully endorse the buy/sell concept as the best of a group of less-than-ideal alternatives.

### IMPACT ON NEW ENTRANTS

Most of the criticism of the FAA's proposed rule involves concern with the economic impact on "new entrant" airlines. In American's view, this criticism greatly over-estimates the demand of real, as distinguished from aspiring, new entrant carriers. There are relatively few real new entrant carriers, i.e. those whose financing is in place, whose equipment is ready for delivery, whose FAA clearances have been obtained, but whose plans have been held up by unavailability of slots. To the contrary, the experience of the scheduling committees tells us that many aspiring new entrant carriers who are awarded slots never commence service, with the result being that these slots go unused for varying periods of time.

The FAA's proposal to reallocate up to 5% of the slots at each of the four airports to accommodate new entrant demand will in our estimation be more than sufficient if properly administered.

### IMPACT ON COMPETITION AND MIDSIZE COMMUNITIES

We also believe that the committee has to ask itself some hard questions about the relevance of the new entrant issue to the FAA's rulemaking. Specifically, will new entrant carriers supply an element of competition that is otherwise lacking? Do they represent a means by which small and midsize communities can expect improved services to high density airports?

In our view, the answer to both questions is "no." The numbers of carriers operating today at each of the four airports in question should rebut any notion that there is a lack of adequate competition. Furthermore, any operations by new entrants will be in lieu of, not in addition to, those of incumbents. Thus, level of competition will not be appreciably increased.

If incumbent carriers are required to give up slots at high density airports so that new entrants can be accommodated, service to small and midsize communities will likely be adversely affected rather than enhanced. This conclusion simply reflects the economics of the air transportation business. Incumbent carriers will cancel their most marginal services (those to smaller communities) while many new entrant carriers will first seek to tap the high density markets (service to major cities.)

### THE WINDFALL ARGUMENT

Any windfall that inures to the benefit of incumbent carriers at the four airports in question as a result of the fact that demand for slots exceeds the supply has already taken place. For example, if the market value of a Washington National slot is $100,000, an incumbent is deriving today all the benefits of using what might be likened to a $100,000 asset that has been fully amortized and therefore not giving rise to operating costs. The FAA rule would not bestow a windfall; it would simply provide an incumbent the alternative of transferring the slot to a carrier which can recognize a greater economic value from its use.

We believe that whatever new approach is to be devised to the slot allocation problem, the rule to be adopted must take the parties as it finds them and use the current pattern of operations as the base from which changes are to be made. Any other approach would be grossly inequitable. While incumbent carriers may not have invested in slots, they have invested significant amounts of money in facilities, aircraft, employees and a variety of other resources devoted to the services they currently provide.

### IMPACT ON FUTURE CAPACITY ENHANCEMENTS

Opponents to the buy/sell rule have been heard to claim that its implementation will result in disincentives on the part of incumbents to support capacity enhancements at the four airports. This argument suffers from the same infirmity as the windfall argument.

Whatever market value slots may have, that value is currently being realized by the incumbents each day that they operate in a slot constrained environment. If this value gives rise to disincentives, that phenomenon is taking place today.

Furthermore, the largest incumbents at the four airports in question have been among the most vocal about the need for capacity enhancements. For this reason, the disincentive theory doesn't seem to hold up in practice.

### CONCLUSION

For these reasons, American believes that the FAA's proposed rule should be allowed to become effective as scheduled. It is highly unlikely that the rule will result in any dramatic realignment of service patterns at the airports in question. It is also unlikely that any material demand of real new entrants will go unsatisfied. To the extent that any shortcomings in the rule become manifest, they probably will be of the sort that can be fixed by appropriate amendments to the rule. If our assessment is incorrect, and the rule proves in practice to be incompatible with the public interest, then Congress would have a sound basis for remedial legislation.

Senator KASSEBAUM. Thank you very much.

Let me first just share with you some observations.

Mr. Aste, you said that you believe S. 1966 would be disruptive. That essentially is what Mr. Burnley said when he was testifying.

I tend to believe that, whatever happens, whether it is DOT's rule or some other legislation that may be passed, it is going to be disruptive for a period of time because we have forces at work in the marketplace today that are very different than those at work in 1980 and 1982.

I think, given that, there is a great deal of uncertainty and disruption in the marketplace today.

The intent of S. 1966, and my intent, was really to indicate that there is a lot of question, still, about what would be the best way to handle this situation.

No-one disputed that the status quo does not work. What I think is a real problem are those slots that are not being used, that are being held by an airline and not used to full capacity. Those slots should be made available immediately.

A lot of other questions arise: whether there should be some redefinition of high density for instance. I don't really see, Mr. Cohn, how you can just say let the airport manage its own business in that respect. It seems to me that there has to be some control, as far as the number of flights that can be handled during certain hours. I don't know who makes that determination, but at this point it seems to me that it is very much a part of our air traffic control system.

Mr. Cohn. May I comment on that briefly, Senator.

Senator Kassebaum. Yes.

Mr. Cohn. I was not suggesting that we open that element of the system to the free market. I was suggesting that there already is an adequate control of the air traffic input into the system through the FAA's flow control process, that is, a process that works at Newark, it works at Los Angeles, it works at Denver, it works at San Francisco, it works at all of the major airports—it works at National and it works at O'Hare. We do not need to layer on top of that a very static, nondynamic, slot control, regulatory—which is what it is—system, on top of the ATC system.

When you fix at 35 slots an hour in perpetuity, that does not allow the airlines to actually schedule in accordance with the particular air traffic control resources that are available at that day or in that hour, under those circumstances, based on weather, runway conditions, et cetera.

What I am saying is if you really delve into the validity of imposing a high density rule, there is not any.

Senator Kassebaum. Well, I think that is a good question. I think that is something we should give some thought to, that we have not really reviewed here, at least in any major way.

But I would also like to ask if you really believe that slots would be sold wholesale? It seems to me, if I were looking at that decision, I would be much more inclined to lease the slots that I had than to give up that proprietary right that has been assumed by the airlines for the slots that they hold.

Mr. Aste. May I respond to that?

Senator Kassebaum. And it seems to me that there could still be a great deal of confusion under this rule. Moreover, you are not going to want to sell or even lease to somebody who is going to be a major competitor with People Express.

Mr. Cohn. Interestingly, though, the dynamics of the competitive process create some strange anomalies.

For example, United Airlines provides virtually all of the maintenance services for People Express.

Now why is that? We are a principal competitor of United's in many markets. But they also see that there is money to be earned, that it keeps their employee workforce busy, it stabilizes their finances. So there are benefits to be derived.

Senator KASSEBAUM. But that is a little bit different using slots to compete with United.

Mr. COHN. Yes and no.

If there is something that People Express, for example, could offer United somewhere else—it may not be cash; it may be a facility opportunity somewhere else in the country—it all depends on the forces of supply and demand. There is a market, at some point there is a market for every particular type of commodity, whatever it is. Here we have an opportunity commodity, which is a slot, for which there will be a market. It might be a lease market or a sale market.

Mr. ASTE. Senator, if I may respond, you have two themes here. One is use it or lose it and the other is the question of leasing versus sale, and there is a commonality there.

With regard to use it or lose it, both your legislation and the proposed rule address that problem, to prevent the abuse of pocket slots or slots being held for the purpose of a monopolization, in the worst case.

So, we strongly endorse the use it or lose it concept being applied, either through rule or legislation or whatever.

But it also goes to the question of the purpose of sale versus leasing. I think the ability to lease may very well provide a needed market mechanism for those carriers which have seasonality in their systems, like South Florida or East-West pleasure markets, to buy the resource or lease the resource—mainly, the slot—only for the time they actually need it, rather than to have to outlay for the purchase of it and then sell it and buy it, sell it and buy it.

I think you are going to have a lease market and it is going to provide a useful purpose.

Again, going back to the time and the use it or lose it, besides monopolization, if you did not have use it or lose it, you could have a situation where you could have speculators come in who had nothing to do with the airline business and who would try to create artificial scarcity by buying slots, withholding until the price was jacked up, and so forth.

So I think there is a trend between the two concepts. Neither one is contrary to the public interest, in our view.

Mr. OVERBECK. Senator, when I referred to section 3(d) of your rule, I did not mean to suggest that we are in any way critical of the use-it-or-lose-it rule. I think that part of your bill is excellent.

On the other hand, the FAA's own rule has a use-it-or-lose-it provision, which will prevent a carrier that is not using a slot from selling it. That slot will simply be taken away from him.

So, on that issue, I think your bill and the FAA rule are about equal.

Senator Kassebaum. How do you answer—and to a certain extent you have touched on it—the concern expressed by all of us who sponsored S. 1966 about the fact that a slot is essentially a public asset for you have not paid? Why should you be able to sell them?

Mr. Overbeck. May I take the first crack at an answer?

Admittedly, we have not purchased slots at an airport like O'Hare. On the other hand, we have been operating there since that airport opened. It is carriers like United and American that have made that airport possible.

Our facilities at O'Hare represent investments well in excess of $100 million over the years. Although we have not bought the slots, it has been our commitments and our investments that have put the airport where it is today. If you now turn around and tell us that we have no better right today to operate at O'Hare than anyone else, we just simply cannot agree with that.

Senator Kassebaum. There are many airports today—and I am not familiar with just what O'Hare might be doing today—that have also, as airport authorities, made great investments in trying to accommodate the airlines. So they, themselves, have a great investment.

Mr. Overbeck. Well, those investments are usually made through the sale of municipal bonds, which have as their security the airline commitments—operating agreements and leases of facilities. Otherwise, the bonds would never be sold.

So, the basis of the airport's development is always the incumbent airlines" willingness to invest and to commit over a long period of time.

Mr. Cohn. Senator, I also think that the essential point is it assumes there is a windfall to be garnered by the carriers who are selling the slots; and, in fact, it also assumes that are already enjoying a windfall. I think it is important to recognize that the carriers who are incumbents at high density airports today are enjoying significant windfall profits by virtue of being (a) protected from competition; and (b) being able to charge essentially higher fares for service to and from those airports than exist in a noncompetitive environment.

There have been studies that have been performed—and we pointed that out in our testimony—that if you compare the National Airport and Dulles fares, for example, National is in the same city pair, airport pair markets, National is higher. The same goes for LaGuardia versus Newark.

The reason for that, I believe, has a lot to do with the high density rule.

I also believe that if there is some value to be received by the carriers who are selling them, it is a small price to be paid to develop that fluid motion and dynamic movement of slots which does not exist and which I do not believe would exist under either the scheduling committee or the S. 1966 proposal.

Senator Kassebaum. I find it hard to really believe that it isn't going to be a gain for those airlines that will make this decision, and the larger airlines, particularly, that are able to dominate a certain market area, particularly the four airports that we are talking about.

I think that this is not a situation that will be limited to those four airports, and one could make the argument that it shouldn't be. If it is going to be a problem at O'Hare, why not Los Angeles, or St. Louis? These I think are going to be questions that we will soon be asking ourselves down the line. And if it fits in one situation, it certainly should fit in all, as a concept.

But, for me, one of the really troubling aspects is when we are selling National and Dulles, for instance, why would we essentially be giving away those assets represented by slots?

I think that is the basis of much of our concern, as well as the fact that there are larger problems in the total picture that we have not carefully evaluated.

I cannot blame you in any way for being supportive of this concept. If I were in your position, I am sure I would be, too. But I think when we have to view the whole market, I believe there is a public responsibility to make sure that the aviation industry and our airways system, which are part and parcel of the same thing, are going to operate with as much stability as possible, and with minimal disruptions.

I do thank you for your testimony, and we will take it under consideration.

Our next panel will consist of Mr. Stevenson, Mr. Witkowski, and Mr. Murdoch.

It is a pleasure to welcome you.

We have Mr. Sandy Murdoch, counsel, Jet America Airlines; Mr. Ed Witkowski, director, future schedules, Ozark Airlines; and Mr. Robert Stevenson, system manager-schedulines, Delta Airlines.

Mr. Murdoch, Mr. Stevenson—who would like to begin?

## STATEMENTS OF ROBERT L. STEVENSON, SYSTEM MANAGER, SCHEDULES, DELTA AIRLINES, INC.; ED WITKOWSKI, DIRECTOR, FUTURE SCHEDULES, OZARK AIRLINES; AND SANDY MURDOCH, COUNSEL, JET AMERICA AIRLINES, INC.

Mr. STEVENSON. Madam Chairman and members of the committee, I am Robert L. Stevenson, system manager, schedules, for Delta Airlines, Inc. My experience with Delta includes 17 years in Delta's schedules department, and I am responsible for the planning and implementation of Delta's schedules.

We have submitted a full written statement which we would like to have added to the record of the hearing.

Senator KASSEBAUM. That will be included.

Mr. STEVENSON. To summarize that statement, Delta commends you, Madam Chairman, for your leadership in introducing S. 1966, which would prohibit the buying and selling of airport slots and in scheduling this important hearing.

Delta strongly supports the bill's prohibition on buying and selling of slots. While we support the general thrust of the legislation, we have certain reservations and recommend modifications to its provisions.

We believe the significance and impact of the bill can be enhanced if it addressed airport access issues more directly. Thus, Delta recommends that the bill prohibit expansion of slot controls to any airports other than the four existing high density rule airports.

Delta further recommends that the bill direct that the slot constraints at the HDR airports be phased out over a period of time. Only in this way can the attention of the Governments and the industries involved be turned from making access restrictions more palatable to implementing the necessary improvements to our airport and air traffic control systems.

Delta agrees with your assessment that the Department of Transportation's part 93, subpart (s) which allows slots to be bought and sold represents poor public policy. The right of an airline or other entity to use a public aviation facility should not be viewed as private property, to be exploited by the holder for private gain.

As long as such airport restrictions are maintained, they should be regulated by the Federal Government in the public interest and not bartered freely by private parties.

Delta's primary objection to subpart (s) rests on this public policy ground.

Delta is extremely concerned, however, over proposals by the department and various members of Congress to address the deficiencies in the department's policy by substantially redistributing existing slot allocations on a random basis by lottery. There is no mistaking the chaos this would cause. Such a redistribution would severely disrupt existing schedules and produce employee dislocations.

Proponents of such slot redistribution proposals fail to recognize the efforts and the investments which incumbent airlines and their employees have put into the construction and development of their existing facilities and services.

Delta, for example, recently completed the construction of terminals costing nearly $100 million each at Chicago's O'Hare and New York's LaGuardia Airports.

We should not be forced to cancel Delta flights at these key airports and turn over these new facilities which were financed and backed by Delta's credit to other carriers because we might no longer have the slots necessary to continue operating those existing services.

Therefore, Delta strongly urges that the proposed section 3(d)(2) of S. 1966, which instructs the Secretary to reallocate some number of slots in the event of a scheduling committee deadlock be deleted. Such a provision would provide incentives to certain carriers to press unreasonable demands, thus creating artificial deadlocks for the express purpose of triggering a disrupting reallocation.

Indeed, the bill should prohibit any substantial or periodic redistribution of slots, such as proposed by the department in its notice 85-25.

Delta suggests that certain additional improvements be made to the bill. These include the prohibition on alternatives to buying and selling slots, such as auctions, lotteries, and the like, which are equally deficient from a policy standpoint.

It would also be helpful for the bill to specify that slots may be traded without consideration only on a one-for-one basis or a slot at the same airport allowing multiple or inter-airport transactions, that it borders on permitting the buying and selling of slots.

Delta supports the bill's reliance on the scheduling committee system to provide for the allocation of slots at the HDR airports with appropriate use it or lose it and deadlocking breaking mechanisms. Such a deadlock breaking mechanism should not, however, involve the reallocation of existing slots.

As detailed in my written statement, the scheduling committees have accommodated new entry at these airports and can continue to do so in an equitable manner, with such mechanisms implemented.

In closing, Delta reiterates that our focus in our industry and its regulations must be on completing appropriate airport and air traffic control improvements necessary to handle the demands of the system. The best way to encourage this is by promptly removing slot controls and appropriating adequate expenditure of moneys from the trust fund which was established for this purpose. Failing that, the selling of slots should be prohibited and a scheduling committee system should be retained, with appropriate use it or lose it and deadlock breaking rules.

Thank you for your consideration of Delta's views on this important issue. I will be happy to answer any questions.

[The statement follows:]

## STATEMENT OF ROBERT L. STEVENSON, SYSTEM MANAGER, SCHEDULES, DELTA AIR LINES, INC.

I am Robert L. Stevenson, System Manager—Schedules of Delta Air Lines, Inc. My experience with Delta includes seventeen years in Delta's Schedules Department.

Delta commends you, Madam Chairman, for your leadership in introducing S. 1966, which would prohibit the buying and selling of airport slots, and in scheduling this important hearing. We sincerely appreciate the opportunity to appear before you today to address such major issues affecting our industry. We hope that our participation will contribute to the best resolution of these issues.

Delta views the slot allocation issue and the recent promulgation of Part 93, Subpart S by the Department of Transportation with the gravest concern. Delta strongly supports the central thrust of S. 1966—the prohibition of the purchase or sale of slots. Slots are essentially operating rights limited because of federally-imposed constraints and should not be treated as a purely private asset to be bought or sold freely. In addition, Delta vigorously opposes any substantial redistribution of current slot allocations at the affected airports, as contemplated by the Department and some members of Congress. Such redistributions would cause serious disruptions to established services, deprive airlines of the use of facilities in which they have invested heavily, and cause dislocations in the workforces of the affected carriers.

### I. REMOVAL OF ALL SLOT RESTRICTIONS IN FAVOR OF AN OPEN-SKIES POLICY, COMBINED WITH DETERMINED COMMITMENT TO EXPANSION AND IMPROVEMENT OF AIR TRAFFIC CONTROL CAPABILITIES, IS THE BEST SOLUTION TO ACCESS AND SLOT PROBLEMS

Before addressing the specific issues posed by the Committee, I want to stress that the best solution to the problems under consideration is a reaffirmation of our government's commitment to an open skies policy through prompt removal of all slot controls and expansion of the capacity of our air traffic control and airport systems. An open skies policy is achievable: It requires a recognition of the manner in which slot constraints—which were never intended to be permanent—dilute the benefits of deregulation and harm the air transportation system. It requires a dedicated effort to reject slot quotas at all airports in favor of growth and development. It requires improvements to the ATC system. It requires difficult decisions, a commitment of resources, and hard work—but it can be done.

Thus, as a matter of top priority, Delta urges the Committee to reject the continued imposition of slot controls at the four High Density Rule (HDR) airports—not to mention the expansion of slot restrictions to other air carrier airports.[1] In fact, it would be appropriate for S. 1966 to include language explicitly prohibiting the imposition of slot controls at other airports, and requiring the staged phaseout of slot controls at the current HDR airports.

### II. DISCUSSION OF THE DEPARTMENT'S RULE

The debate on whether slots should be allowed to be bought and sold has sharply divided the industry. A number of proponents of the Department's Part 93 Subpart S advocated its adoption on the theory that it is an economic or market-based solution to necessary access restrictions which will allow slots to be utilized by those carriers which can most benefit the public. Under this approach, maximum benefit would be recognized by the amount of revenue a carrier can expect to obtain with a slot and therefore the price it is willing to pay for that slot. While this argument has superficial logic, Delta believes the policy is most unwise, and we remain strongly opposed to Subpart S or any buy/sell[1] proposal for a number of reasons.

First, the right of an airline or other entity to use a public aviation facility should not be viewed as private property to be exploited by the holder for private gain. As long as such airport restrictions are maintained, they should be regulated by the federal government in the public interest and not bartered freely by private parties. Although there are practical problems with Subpart S (as described below) Delta's primary objection to the rule rests on this public policy ground.

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[1] Delta is concerned by even such well-intentioned statements as Madam Chairman's preamble to S. 1966: "I offer the fact that, by the early 1990's, over 30 U.S. airports will require some type of slot allocation during the peak traffic periods."

This cannot and must not happen Our airport and air traffic control systems can and should be required to maintain pace with the demands of the users: passengers and shippers.

Second, the users of the system currently pay very high taxes which are intended for the expansion of the system and its capabilities. Subpart S, in effect, adds surcharges to these taxes, since the cost of slot acquisition will be passed along to the ultimate customers. There is certainly no justification for additional taxes at a time when billions of dollars in trust fund monies for this purpose are not being spent.

There are also a number of unfair aspects to Subpart S. The carriers which originally obtained these slots did not have to pay for them, yet they could receive compensation for their sale. Those carriers acquiring slots would have to pay a substantial cost which their competitors did not have to bear. Finally, a persuasive argument has been made that Subpart S could result in service dislocations, with most of the service going to the largest and densest markets.

Moreover, allowing certain carriers to profit from slot sales could lead airport operators to seek similar profits through charges on access to their airports. This would further restrict access to and hinder use of the air transportation system, and substantially increase the cost to the ultimate users. We may even see slots imposed for air traffic control centers, with a proliferating hodgepodge of access restrictions and "entry fees." Those of you familiar with the problems of airport access and air traffic control in Europe know this must be avoided.

Treating slots as private property and allowing them to be transferred for consideration could also change their current legal status as not constituting assets of a bankrupt carrier's estate.[2] This could mean that slots used by a carrier which goes into bankruptcy could be tied up in the carrier's bankruptcy proceeding for months or even years and be unavailable to others wanting to provide service to the public.

It is fallacious to argue that Subpart S is a market-based solution, since it prohibits transactions between different classes of users (such as commuters, general aviation, etc.). The underlying concept of buy/sell is that any person who wants to use such a scarce resource should have to pay a market price. Given that concept, there is no justification for distinguishing among, and thereby favoring, different classes of users.

Certain supporters of Subpart S argue that it will provide for new entry. We do not expect that small carriers will be able to gain substantial access to slot-controlled airports through the purchase of slots. Indeed, few slots likely will be purchased by new entrants; the Uniteds and the Americans are likely to do most of the buying that does take place, and the smaller carriers will do most of the selling. The scheduling committee system provides far more effectively for new entry than Subpart S.

In addition to the Department's proposal to redistribute up to 5% of the existing allocations,[3] certain members of the Senate and the House of Representatives, including the Chairman of the House Subcommittee on Aviation, have called for a wholesale redistribution of slots. Such an outcome would be even more disastrous for the public than Subpart S itself. Service over certain routes would disappear. Employees would lose their jobs or be displaced. Many communities would lose service or face a deterioration of service. Fortunes would be won at random by the lucky recipients of the government's largess. Indeed, the names of the airlines and the principal routes might just as well be placed in a hat, pulled out, and matched up by the luck of the draw.

Advocates of such draconian measures fail to recognize or appreciate the enormous investment which incumbent carriers and their employees have made in existing facilities and services. What possible justification is there for simply voiding such efforts? Wouldn't the recipients of these redistributed slots receive an enormous windfall? The proposals don't even restrict the lucky winners to new entrants—Eastern could be the big winner! There is no logic in taking away slots from Delta so that Eastern or any other airline can step in and take over a market that Delta developed. That's what a slot redistribution policy is: taking markets away from carriers and giving them to other carriers, with no rhyme or reason to it.

Delta operates only fifteen flights a day from Washington National Airport, serving only four nonstop markets: Atlanta, Boston, Memphis and New Orleans. Any reduction in our slots would mean a serious reduction or elimination of our service in one or more of those markets. It might be pointed out that we could get lucky under the redistribution proposal, and that the lottery might increase our slots. To that, we respond: Delta does not believe that airline management and government policy should be a game of chance. Airline routes and timetables are complex structures, painstakingly assembled—they should not be vulnerable to miscues of chance.

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[2] Notwithstanding the Department's attempt to address this problem in section 93.227(d) and (h).

[3] Notice 85-25, 50 Fed. Reg. 52159, December 20, 1985.

There is a much more practical way to assure new entry to such restricted markets, and it ties in with the emphasis on capacity enhancement: The Department and the FAA should be obligated to make a limited amount of new capacity available each year, of which a portion would be limited to carriers which have not previously served the airport. Such a policy would limit the disruption to existing service while properly directing the attention of DOT and FAA to the expansion of the capabilities of our airport and airway facilities. Even if as few as four new slots a year per airport were offered, these slots, combined with slots available through the "use it or lose it" rule and attrition, would largely satisfy new entrant demands. Such a policy would also properly focus the attention of new entrants on the enhancement of capacity and the need to compete fairly, rather than on efforts to secure the turnover of whole markets through government intervention.

## III. DISCUSSION OF S. 1966

Many of the previous comments on Subpart S apply to portions of S. 1966 and related comments of cosponsors. Delta strongly supports the central concept of S. 1966—the prohibition on slot sales. Delta believes, however, that the bill can be improved in many respects and, indeed, its significance and impact enhanced.

As noted earlier, S. 1966 would be an excellent vehicle by which to focus the Department's and the FAA's efforts on increasing the capacity of our air transportation system through a prohibition on the spread of slot controls to other airports. The bill should also require a phased elimination of slot restrictions at the four HDR airports.

Along with buying and selling slots, other, equally poor options for rationing airport access have been considered: auctions, lotteries and the like. The Department might revert to such options since S. 1966 is enacted. Delta urges the prohibition of such alternatives in S. 1966.

In addition, as noted previously, Delta opposes slot reallocation and urges that proposed section 3(d)(2) of S. 1966 be deleted. Indeed, the bill should prohibit any substantial or periodic redistribution of slots, as proposed by the Department in Notice 85-25. To the extent the Senate retains section 3(d)(2), however, any slots reallocated should be allotted to new entrants only.

Delta also supports the concept in section 3(d) that no recall method should result in undue loss to any carrier. Many commenters have advocated a restriction which would limit any single carrier's loss at any one airport (as a percentage of its slots at that airport) to the percentage withdrawn as a whole. Delta has pointed out that, since many smaller carriers would lose more than that percentage if they lost even one slot, the effect of such a limitation would be to insulate many carriers from any risk. This, in turn, would increase the impact on carriers with a moderate number of slots, such as Delta.

Delta supports the continued operation of the scheduling committees, augmented with use-it-or-lose-it requirements and a deadlock-breaking mechanism, as embodied in the bill.

You have asked whether Subpart S will lead to a reduction in service to mid-size communities. The answer is that the slot restrictions inherently force service to the larger markets in each slot pool as slots become more scarce for each individual carrier and the number of carriers increases. Delta questions whether there is any longer a justification for retention of separate air carrier and commuter scheduling committees and slot pools. This distinction made some sense in light of the developing state of the commuter industry in 1970. Today, however, such regionals as Air Wisconsin, Pilgrim, Empire and others operate a mix of large and smaller aircraft. It is extremely difficult for these companies to schedule their operations through participation in two different slot pools. Correspondingly, the early demand for more commuter slots as these companies blossomed has now evolved into a demand for more air carrier slots as the regional carriers have acquired jets. Thus, there now appears to be an imbalance between the number of air carrier and commuter slots. This has led to problems in service to mid-size communities, which saw larger carriers withdraw service as slots were lost. Delta believes that the existence and nature of the fence between the two groups should be reconsidered, and that its elimination likely would enhance service to these communities.

Finally, Delta believes that it would be helpful to specify in the rule that slots may be traded (without consideration) on a one-for-one basis for a slot at the same airport only. Allowing multiple or interairport transactions virtually allows the exchange of slots for consideration.

## IV. TO THE EXTENT ACCESS RESTRICTIONS MUST BE RETAINED, AIRLINE SCHEDULING COMMITTEES ARE THE BEST ALTERNATIVE FOR ALLOCATING SLOTS

To the extent airport facilities are being fully utilized in every sense and further expansion or improvements cannot be made, the full Visual Flight Rule (VFR) capacity of the airport should be allocated through the mechanism of airline scheduling committees. Based on over sixteen years experience under the HDR, the airline scheduling committee approach has been successful in allocating scarce airport capacity on a nondiscriminatory basis. While agreements are more difficult to reach in a deregulated environment, scheduling committees can still work effectively if minor regulatory changes are made to the way in which they operate.

A review of air carrier operations at the HDR airports demonstrates the success which the scheduling committees have achieved in accommodating new entry at the restricted airports. It is clear that under deregulation carriers which previously did not have operating authority to the restricted airports but have desired to initiate services have been granted entry to these airports. Similarly, carriers which have begun operations since deregulation have also been granted considerable access to the restricted airports.

In June, 1975, 593 of the 640 available slots at National Airport were allocated to only ten carriers. By June, 1985, nineteen carriers were using 559 slots at National, although the official allocation had been reduced to 555. [4] Over the same period, the number of airlines using air carrier slots at LaGuardia rose from 14 to 23, while the air carrier slots available remained at 48 per hour. [5] By way of further example, New York Air, which commenced operations after deregulation and had no slots at LaGuardia in June, 1978, had obtained 57 slots by June, 1981, and 70 slots, representing 8.6% of the total allocation, by June, 1985. Similarly, New York Air, which had no slots at National in June, 1978, secured 18 slots by June, 1981, and 56 slots, representing 10% of the total allocation, by June, 1985. Other new, post-deregulation carriers such as People Express, Midway and others, have established significant services at one or more of these airports, or have initiated substantial services at nearby, unrestricted airports.

Even critics of the scheduling committee system concede it has not blocked new entry. The Polinomics Report, prepared for the Civil Aeronautics Board in 1979, noted:

> ". . . the scheduling committees do not appear to preclude entry. In fact, it is probably easier for an entrant to obtain a few slots than for a large carrier, e.g., Eastern at Washington National to increase operations by the same number of slots." [6]

The scheduling committee option best meets the needs of the users and the public for predictability and stability. Reliability is a key factor in the attractiveness of air transportation. Subject to occasional market-based changes, the schedule committee system provides some assurances that carriers and markets served will not be changing chaotically, as would be the hallmark of alternative systems.

The Report and Recommendations of the Airport Access Task Force, responding to a Congressional directive to review a host of airport access issues, agreed that airline scheduling committees were the best available method for allocating slots. The Task Force concluded:

> "A majority of the Task Force recognizes the need for minimum governmental involvement and maximum motivation for finding and implementing technological solutions to restrictions, and believes that the Scheduling Committee system, embodying an acceptable fail-safe system, is the most desirable allocation method." [7]

Over the past couple of years, the scheduling committees have had increasing difficulty reaching the unanimous agreement required. The problem is traceable to a number of causes, including an increasing demand for access (coupled with the failure to increase the number of air carrier slots available), the pendency of far-reaching proposals to change the system and possibly imbue slots with significant monetary value, and lack of enforcement of the allocation limitations.

The critics who charge that this recent experience demonstrates the demise of the scheduling committee system are correct to the extent that the committees cannot function effectively in the current environment. Nevertheless, the scheduling committee system is worth saving, and it can be saved if the following steps are taken:

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[4] Braniff accounted for the extra four through a special allocation.

[5] On April 1, 1984 the FAA increased the airport total movement limit from 60 to 68, but none of these was allotted to the air carrier group.

[6] Grether, et al. "Alternative Methods of Allocating Airport Slots: Performance and Evaluation," August 1979, p. IV-10.

[7] Report and Recommendations of the Airport Access Task Force, March 10, 1983, p. 29.

(a) An effective "use it or lose it" mechanism must be implemented and its provisions enforced;

(b) A deadlock-breaking mechanism to handle impasses must be put into place;

(c) Detailed rules concerning permissible trades and transfers must be enacted; and

(d) The FAA must resolve all outstanding rulemaking proposals and petitions.

## V. CONCLUSION

Delta urges the Committee to reaffirm the government's commitment to a policy of open skies, and to direct the Department and the FAA to remove all slot restrictions promptly. Emphasis must be placed on expanding the capacity and capability of the air traffic control system rather than making access restrictions more palatable. Alternatives to the scheduling committee system, including buying and selling of slots, are unacceptable and should be prohibited by legislation. S. 1966 is an appropriate vehicle, and Delta supports its major concepts. Delta strongly opposes, however, proposals for the substantial reallocation of existing slot allocations.

Delta sincerely appreciates the opportunity to present its views on these vital issues to the Committee.

Senator KASSEBAUM. Thank you, Mr. Stevenson. Mr. Witkowski.

Mr. WITKOWSKI. Senator Kassebaum, thank you very much for the opportunity to appear here today. We have submitted a written statement which I will ask be incorporated in the record, and we will limit our comments to a brief summary.

Senator KASSEBAUM. Thank you.

Mr. WITKOWSKI. Ozark, too, feels that the current rule on buy/sell is bad public policy. We feel that there are some very predictable outcomes which we will all, at some point in time, find very undesirable.

Among the outcomes we would predict are less competition, higher fares, fewer options for the travelling public, and probably fewer carriers.

We find the rule is based on flawed economic logic, which argues that price will somehow magically allocate slots to their best use.

This flawed logic ignores the reality of the airline industry today, an industry that is characterized by a highly skewed distribution of income and by a highly skewed endowment of slots to a very small number of carriers.

The rule's logic also ignores the power of large slot-holders to intimidate and to determine who will buy and who will sell in any market. It ignores the very sizeable incentive that large slot-holders have to buy out their competition, thus increasing not only their load factors and access to the airport, but also, quite conceivably, increasing yield.

We feel that the rule ignores significant issues of equity. In our mind the present slot-holdings are a direct outcome of years of very tight regulation of the airline industry, which limited the access of many carriers, such as Ozark, to the high density airports.

The rule now seeks to confirm the results of this tightly regulated environment by a department, whose purpose, it is our understanding, is to maintain an environment that is supportive of competition rather than confirming the regulation.

There are a number of arguments that have been made by proponents of the rule which I would like to speak to specifically.

In terms of possible and potential competition, many have suggested that there are always alternate airports that carriers fly into to act as competitive spurs. This argument ignores the fact that in some cases, such as Newark, the alternate airports may, in fact, become congested, high density airports themselves. Secondly, it ignores the possibility of the expansion of the high density rule to other airports that have no alternatives.

A second argument that is often made is what I would call the People Express argument. We have heard that argument in person today.

The logic goes that since People Express, as a new entrant in 1982, had the ability to buy slots at Washington National, therefore new entrants have that same ability today.

I think that logic is flawed and ignores the changes in the airline industry that have taken place since 1982. People has done a number of things that the rest of us do not seem able to duplicate. It is fallacious to feel that all new entrants can do what they do.

I think we have found that capital markets are considerably tighter for new entrants, particularly following the bankruptcies we have seen in the new entrant ranks over time.

There are also radically different circumstances obtaining now than did in 1982.

In 1982, the system had been completely disrupted because of the PATCO strike. Carriers were rebuilding their systems. There were many, many airports that were slot restricted, many airports where carriers were buying slots to rebuild what existed before PATCO. I do not think those circumstances would be duplicated today for new entrants.

I would also point out that People Express, while they have enjoyed success in the market, has also enjoyed success by working for the airline scheduling committee. To my recollection, their holding of slots in Chicago were a result of their negotiations through the airlines scheduling committee. So they have had success in that area also.

I think for similar reasons, those who argue that we have had some experience with buy/sell, again during that 6 week period, would find circumstances radically changed today.

I think, finally, it is important to note that the department has never provided the scheduling committees the tools that we have asked for which could have allowed the scheduling committees to work. The use of lose rule is one example of the tools that would have made the scheduling committee considerably more efficient. Some deadlock-breaking mechanism I think would have been very helpful to the scheduling committees.

We have resorted to the most radical remedy before trying any others. Once buy/sell is implemented on April 1, other, milder, remedies no longer exist.

Thank you, Senator.

[The statement follows:]

## STATEMENT OF OZARK AIR LINES, INC.

Founded in 1950, Ozark Air Lines spent most of its life as a highly regulated "Local Service and Feeder Carrier". Since the Deregulation Act of October, 1978, Ozark has restructured its route system and enhanced its fleet in response to the new opportunities for competition. Revenues have more than doubled between 1978 and 1984, to almost one-half billion dollars annually while the number of passengers carried has increased to more than five million a year. Ozark falls within the Department of Transportation's definition of "National Carrier" and currently employs more than four thousand people in twenty-five states.

It is Ozark's position that the creation of a market mechanism for airport slots will reduce competition and increase barriers to entry.

Price will rationally distribute scarce resources only in a competitive industry.

Any model which predicts that the market will allocate resources most efficiently rests on a number of assumptions. These assumptions are simply not valid in the real world of today's airline industry. Among such assumptions is that the distribution of income is relatively unskewed. Dollars are votes; if a component of the population is disenfranchised, the market does not work. The airline industry is composed of the rich and the poor. The assumption that a new entrant carrier attempting its first stock issue has the same ability to bid on scarce slot resources as does a carrier with a billion dollars in cash on hand is terribly optimistic.

The Department of Transportation also appears to assume that there will be no interference in the free flow of slot resources based on the identity of buyer/seller. This assumption is disingenuous in the extreme. Should United Airlines wish to sell slots at Chicago, it is quite unlikely that they would do so if the buyer were American Air Lines, a direct competitor. Even less likely is the possibility that an entrenched, relatively high cost carrier would sell access to a low cost, low fare new entrant.

Finally, large slot holders are, in the main, large holders of other resources such as gates and other physical facilities at the nation's airports. They have historically provided services such as aircraft handling and gate access to small carriers like Ozark. All of these assets can be used to intimidate and further limit a free market. As an example, if Carrier A is considering the sale of slots and relies on Carrier B for the use of facilities at other airports, these slots may well never see the light of the free market. Carrier B can easily say, "We are interested in buying the slots you offer or insuring that Carrier C does not buy them, and, by the way, we are presently reviewing whether we can continue to handle your flights at other airports". Unless Carrier A is terminally dense, the slots will be sold to Carrier B or denied to Carrier C without recourse to anything approaching a free market. Those who assume this will not happen will also probably deny that it has happened.

Those large carriers with large slot holdings have an incentive as well as an ability to purchase market power by purchasing slots.

The most fundamental error underlying the proposed slot allocation by purchase is the belief that ultimately carriers will not pay more for slots than would be justified by the rate of return from investment in the slot or any other asset. Perhaps this could be true in the long run if poor or uneconomic decisions would be punished by competitive forces and consequent bankruptcy. Buy/sell can, however, be used in the short run to insure that in the long run there are no competitors. It can, and clearly will, be used to buy relief from the discipline of competition.

Some elaboration is necessary. With a small number of slots at restricted airports, Ozark and other similarly situated carriers will have to determine how much it can pay for a slot at a restricted airport such as Washington National. This determination will be based on assumptions about passenger flow, yield, etc. It will be made with the clear understanding, however, that Ozark is too small a player for its actions to affect the market as a whole. What will be acquired through purchase is the ability to put another flight (or two or three) into a controlled airport. Those carriers with a large number of slots can purchase far more; they can not only buy landing rights, they can also buy relief from competition. Given their relative size (frequency) they can affect the market. With this relief from competition, they can also acquire the ability to price as a monopolist or oligopolist.

Recent responses to the possibility of buy/sell are instructive. Eastern Airlines proposed some time ago to purchase the LGA and DCA slots of Air Florida. Had the transaction been approved, as it would be automatically under the proposed scheme, competition in several markets would have lessened significantly. In the Florida markets of Ft. Lauderdale/Miami and West Palm Beach-Washington National, the number of carriers would be reduced with one carrier remaining dominant. Not only would competition have been reduced in an absolute sense, but low cost/low fare competition would have been eliminated. By purchasing slots, Eastern could purchase access, load factor improvements, and likely yield improvement all at once. Would Air Florida have had the same opportunity to buy out the competition? Financial well-being aside, Air Florida's competitor between Florida and Washington National held 107 DCA slots. It is easier to buy 12 slots than 107. While Ozark does not attribute any anti-competitive motivation to Eastern or any other carrier, the possibility and temptation exist. The rewards are not only added access, but higher yields, a powerful combination.

Arguments about other forms of market discipline and historical precedent are questionable at best.

Ozark's contention that the purchase and sale of slots will lead ultimately to the limitations on competition, monopoly power, and higher fares are normally countered by recourse to two arguments. The first is that other airports exist in each of the high density cities, and carriers are free to serve these airports to compete. The second is that a new entrant has, in fact, historically been able to gain access through purchase.

## ALTERNATE AIRPORTS AS A COMPETITIVE FORCE

Proponents of buy/sell point out that in each high density city there are uncontrolled airports which can be served by new entrants, etc., and that service to these airports will provide a guarantee that carriers at high density airports cannot price at will. The proponents, however, do not deal with several important questions in their analysis. First, while there may be alternates to existing high density airports, few alternatives will exist for new high density airports. The application of the high density rule to airports such as Atlanta, Dallas/Ft. Worth, or Denver has been discussed. Should this transpire, the alternate airport hypothesis breaks down. It is likewise possible that slot controls may be extended to the so-called alternate airports themselves, removing the possibility of easy entry and competitive pressure. Newark Airport has been mentioned often as a candidate for slot control and, in fact, is still described as a high density airport.

It must also be noted that those airports which exist as alternatives to the high density airports are viewed as significantly different by the traveling public. Service to Dulles is not perceived in the same way as is service to National. Thus, carriers serving the preferred airport without competition can exert some control over the price charged the customer. If the National Airport carrier charges $500 in a market, while the Dulles Airport carrier charges $200, traffic will flow to Dulles. If the differential is only $30, however, it may well not. Truly effective competition involves service in the same city pair, the same airport pair. Buy/sell, we contend, will eliminate just this direct competition.

## THE PEOPLE EXPRESS ARGUMENT

As there has been an experimental period when the purchase and sale of slots was legal, supporters of buy/sell blithely assume that buy/sell will operate in the same way today as it did then. They then cite the fact that People Express, a low cost, low fare new entrant, was able to purchase slots at Washington's National Airport in 1982, and reason that this means that any new entrant will be able to do the same today.

This might possibly be true if, and only if, the other circumstances which obtained in 1982 existed once again. They, of course, do not.

In 1982, following the PATCO strike there were a much larger number of slot controlled airports. It will be significantly easier to reduce entry at the smaller number of high density airports which currently exist. Additionally, the large carriers in 1982 were still suffering from the reduction in operations at their hub airports brought on by the PATCO strike. Today, those hubs have been rebuilt and large carriers are altering their route plans to move from hub carriers to megacarriers.

Finally, even a casual reading of trade and business publications strongly suggests that the romance between the capital markets and new entrant carriers has cooled significantly since 1982. While People Express was fortunate enough to be the right carrier at the right time, this hardly constitutes a basis for predicting that this will be the case today for other new entrants or small carriers.

## CONCLUSION

Ozark would make a prediction. Should buy/sell be allowed, the current high density airports will be oligopolistically controlled and many currently competitive markets will be monopoly markets. The "permanent solution" to the immediate problem may be a "permanent solution" for competition.

We, therefore, urge that the Congress and the Department of Transportation look beyond this "easy" solution to present problems to the future calamity which can develop. Price is an excellent rationing device between players of similar market abilities and resources. It cannot work given the present structure of the airline industry and the concentration of market resources which exists today.

Senator KASSEBAUM. Thank you, Mr. Murdoch.

Mr. MURDOCH. Madam Chairman, thank you very much for inviting Jet America Airlines, Inc., to participate in these important hearings.

My name is Sandy Murdoch, and I am the Washington counsel for the company.

Jet America began operating during the interim operating plan period and struggled through the trying process of the airline scheduling committee to obtain slots at O'Hare and LaGuardia. We also fly at Long Beach and Orange County Airports, where there are flight limitations also.

The position of the company is against the buy/sell concept. Our views are expressed in the comments submitted to the FAA on January 24, 1986, in Docket 24105.

I propose today to add only two brief thoughts to that document, which has been provided to you for the record.

First, Jet America is a small company. We operate six MD-80 aircraft, and we would like to have a few more. In fact, Jet America is in the middle of negotiating a public offering today, so its senior executives were not able to leave Long Beach to participate in these hearings.

The company has worked diligently to create a stable, financial structure, that will permit Jet America to purchase the equipment necessary to expand. We are a small company. The raising of capital is a critical element.

We have devised a plan and developed sources to meet those well-defined needs.

The purchase of slots was not part of the company's acquisition list. If Jet America is to gain access to the four high density airports and other airfields which may attempt to adopt similar rules, the cost of acquiring these access units will detract from the available pool of capital. This will either force Jet America to delay its entry into those markets or cause them to seek other points to serve.

The second thought I would like to make is a bit more philosophical and relates somewhat to my experience as an airline lawyer.

I began the practice of law representing a charter airline. In 1972, the CAB was trying to define what a charter was in an effort to distinguish that segment of the air transportation market from scheduled sales. Each time the Board's able lawyers established some new, complex distinction, the marketplace would find some way to circumvent that structure.

For each regulatory restriction, the marketplace could react and find ways to subvert the Board's rules. There are parallels here with the buy/sell rules.

Each of the department's well-intentioned distinctions will cause the marketplace to react. Regulatory limits on EAS, international, charter, general aviation and commuter slots will be beaten by the clever operators out there in the real world.

Buy/sell is not truly a market solution. It is only a playing field created and administered by the Government.

Unlike the market, where increased demand for resources leads to higher prices and those higher values justify the creation of additional capacity units, here capacity is fixed by the Government, prices for those units will increase, and the free market will have no way to adjust. Supply and demand will not be allowed to have that interplay which, over time, brings price to the margin.

We have a market here which is defined by the Government and will have a fixed supply for the foreseeable future.

Again, on behalf of Jet America, we appreciate the opportunity to express our position.

Senator KASSEBAUM. Thank you very much.

Mr. Stevenson, I'd like to ask you this.

You mentioned that Delta had put a great deal of money into O'Hare. Would you not make the same argument that was made by the previous panel, that having put a great deal of money in, this would be certainly one very valid reason for wanting to be able to sell the slots? Would you make that argument?

Mr. STEVENSON. To answer that very simply, Senator, we feel, as I stated, that it just simply is not in the best public interest to turn over the control of these "valuable assets" to an industry which is financially and profitably motivated.

Senator KASSEBAUM. Would you be willing to abide by a scheduling committee's efforts to try to resolve the situation at O'Hare?

Mr. STEVENSON. Yes, we certainly would, as we have in the past.

Senator KASSEBAUM. What would you favor as a deadlock-breaking mechanism?

Nobody is particularly enthused about lotteries. What are your thoughts on binding arbitration?

Mr. STEVENSON. We have reviewed, ourselves, a number of alternatives. Quite frankly, we have not reviewed arbitration that would be binding. We would be welcome to consider that proposal or a proposal along those lines and discuss it.

But the bottom line is we would be more amenable to something of that nature than we would to a game of chance.

Senator KASSEBAUM. Mr. Witkowski, do you have any observations on that? For instance, has Ozark sought to obtain access at O'Hare, say, or Kennedy, and felt thwarted in the process?

Mr. WITKOWSKI. Ozark's particular problem occurred at Washington National Airport. We did, indeed, feel very thwarted.

As an industry, in response to the NPRM on a deadlock-breaking mechanism, we have come to an agreement among the ATA carriers, the Air Transport Association carriers, on the mechanism that we felt would assit the scheduling committees in dealing with deadlocks.

That mechanism is contained in comments filed by the ATA and supported by the member carriers on the NPRM itself.

We feel that a deadlock-breaking mechanism such as that should certainly be allowed to operate at least during an experimental period as an easier remedy to recover from than buy/sell.

As I indicated earlier, we are very concerned that once buy/sell is implemented, there will be no recourse to other solutions.

Senator KASSEBAUM. St. Louis is your hub, is it not?

Mr. WITKOWSKI. Yes.

Senator KASSEBAUM. How do you view the situation at St. Louis if buy/sell is implemented as a policy for high density airports? Do you see the rule expanding?

Mr. WITKOWSKI. Well, we see that the department has constructed a very neat little regulatory scheme which, it would appear, could easily be applied to other airports by naming them as high density airports.

We also fear that this regulatory scheme will be used to solve any kinds of problems they face at other airports.

So, in specific answer to your question, we would anticipate that the application of the high density rule and consequently the new rule to St. Louis has certainly been discussed.

We have received assurances from the department that there is no immediate contemplation that the rule will be applied. But we certainly have a concern that the rule will extend to other airports.

Senator KASSEBAUM. How do any of the three of you feel about the rule released on December 17, that would allow communities to lease or buy? Would this enhance service to smaller communities, or could you envision some negative results occuring?

Mr. MURDOCH. Senator, I think it is very likely, first of all, that you cannot stop the communities from getting involved in it one way or another. The reverse of Mr. Gammon's suggestion is if a small community wanted an airline to get into an O'Hare or a National, they could go and offer to buy them through it.

So, the sense that any person is allowed to buy or sell a slot I think is really a recognition that there are vehicles by which you can get into the market no matter what. I'm certain that an American Express, or a Merrill Lynch, or Pru-Bache—whoever finds this an interesting financial marketplace—could participate in it, too.

So I do not think there is any way you could stop that.

As to what the benefits to the community are, I think that is what the Deregulation Act meant to say, that those communities and carriers which have the opportunities to serve it have to decide where supply and demand intersect and set a price. I think it is fairly simple what that equation is here.

Mr. WITKOWSKI. If I may, the community deciding to purchase slots so it can be assured of service to a high density airport I think is going to encounter some difficulties. As was noted before, the use-it-or-lose-it portion of the rule means that the community must find an airline to use that slot.

Once negotiations have begun, I think they will be delicate, indeed, because if you, as the community leadership, had purchased a Washington National slot for $1 million, you would like to have some say in the quality of service on the airplane and the price that was charged to your constituents. For its own part, the airline would like to retain all of that flexibility itself.

So, I think, while communities may entertain the notion of buying slots and insuring service, it is going to be a very delicate negotiating process.

Senator KASSEBAUM. Thank you very much.

Does anybody have anything further to add?

[No response]

Senator KASSEBAUM. We appreciate your testimony very much.

Thank you.

Our next panel consists of Mr. Sheehan, Mr. Stimpson, and Mr. Cooke.

It is a pleasure to welcome John Sheehan, senior vice president, Aircraft Operators and Pilots Association, Robert Cooke, vice president, National Business Aircraft Association, and Ed Stimpson, president, General Aviation Manufacturers Association.

## STATEMENTS OF JOHN J. SHEEHAN, SENIOR VICE PRESIDENT, GOVERNMENT AND TECHNICAL AFFAIRS DIVISION, AIRCRAFT OPERATORS AND PILOTS ASSOCIATION; EDWARD W. STIMPSON, PRESIDENT, GENERAL AVIATION MANUFACTURERS ASSOCIATION; AND ROBERT A. COOKE, VICE PRESIDENT, OPERATIONS, NATIONAL BUSINESS AIRCRAFT ASSOCIATION

Mr. SHEEHAN. Thank you, Madam Chairman.

It is my understanding that you would like us to give a consolidated statement, and I am prepared to do that.

Senator KASSEBAUM. At 12:30, I expect you really are.

Thank you.

Mr. SHEEHAN. I will be blessedly brief.

We appreciate the opportunity for being here. I would like to say that our organizations represent the vast majority of those people who will utilize the "other" slots at those four capacity constrained airports that are slotted.

We also comprise some one-quarter of the total passenger traffic in the nation's air transportation system. So we do have a vested interest in what is going on here.

It would seem, however, that we do not have an interest, because our slots will be protected—that is, the "other" slots.

We would like to look downstream, however, and make a point that we feel that our particular operating rights at these airports are in jeopardy.

But, first of all, we would like to state our basic position that we do oppose the buy/sell rule, and we do support S. 1966.

Our first point of opposition is the fact that slots are a public asset and should not be sold as a private entity. We have heard this time and again this morning, and it certainly makes sense to all of us, that it is an aberration of the system if we allow such a precious commodity to be sold.

It also seems to be an aberration of our system of regulations and laws to allow a regulatory agency to put that sort of thing up for commodity auction, if you will, without some sort of stern oversight from the legislature.

Our principal objection to the buy/sell rule stems from the fact that we have already heard today that the most prized slots could easily be $1 million.

Now, I ask a rhetorical question: what happens to the value of the "other" slots at these airports if an airline slot is worth $1 million? Well, obviously, that "other" slot, too, is worth $1 million. How long will it be before the airlines wanting just one more slot, or a new entrant wanting just one more slot, will put pressure upon the regulatory agencies and the legislature, I would think, to claim that slot from the others?

That is our basic fear, that the other slots that we now enjoy at these constrained airports will fall prey to the ambitions of the airlines.

Also, the buying and selling of slots tends to institutionalize the fixed number of slots that we have had for so long. As these slots become the owned rights of the airlines, it will be difficult to change this because any significant increase will tend to dilute the value of those slots, and there will be a great disincentive to pull back from those number of slots if, in fact, they are not needed anymore.

It also seems to br a disincentive to create additional capacity, additional airports, what have you. If these are in place, there will be little incentive for people to go, let's say for the airlines to go out and attempt to get additional capacity.

I guess the larger view, though, if we take a step back from the whole concept of slots or buy/sell is that we do need to expand the capacity of our air traffic system and of our airports in the United States. If we had adequate capacity, we would not be here today, agonizing over a buy/sell rule.

There are procedural and technological changes for the ATC system that I would say have not had adequate emphasis from the FAA or the DOT to put these into effect.

We need additional emphasis on that. We need additional emphasis on placing more concrete, that is, more runways, at these capacity-constrained airports. And we need additional airports, too, as our regional systems expand.

The record of progress for these initiatives that will solve the problem that we are talking about today is very poor. That is where we would like to see the emphasis.

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I have kept my comments, I hope, short enough for you. I am sure that my compatriots have some points they would like to make for themselves.

But we do appreciate the opportunity to testify like this.

Thank you.

[The statement follows:]

STATEMENT OF JOHN J. SHEEHAN, SENIOR VICE PRESIDENT, GOVERNMENT AND TECHNICAL AFFAIRS DIVISION, AIRCRAFT OWNERS AND PILOTS ASSOCIATION

Madam Chairman:

Thank you for the opportunity to submit a statement on the subject of the transfer of operating rights and airport slots.

AOPA represents 265,000 aircraft owners and pilots across the United States who are very concerned about further constraints on the air transportation system.

General aviation annually accounts for 60.4 percent of the total miles flown in this country. This segment of aviation is the vital connection between communities which have little or no air carrier service to the larger metropolitan areas. General aviaton provides on-call air transportation to every part of the nation and to all our national airports.

Given the growth of the commercial airline "hub-and-spoke" transportation system which serves the large urban centers, general aviation is an increasingly important link between the smaller communities and the urban economic centers. Restricting general aviation access to the large metropolitan airports penalizes these communities economically and removes them from the mainstream of the nation.

While AOPA has supported the institution of aircraft arrival/departure quotas (slots) at capacity-constrained airports under the High Density Airport Rule, we object to any buy/sell form of transfer of slots.

The use of hourly quotas for airports came into being in 1969 when the FAA imposed the High Density Airport Rules (FAR 93.121) which created quotas at five airports. The problem at these airports was created by airlines scheduling multiple departures and arrivals for the same narrow time frame. This practice led to quite predictable delays.

We are very concerned that after fifteen years the Federal Aviation Administration has failed to expand and improve the national ATC system and airports to meet the demands of interstate commerce and the growth of aviation. Instead, FAA and aviation policymakers have opted to constrain growth and to institute a caste system between "public sector air transportaiton" and "noncommercial air transportation."

This development has ominous and unfair consequences for nonairline aviation operations which actually constitute the vast majority of aviation activities in this nation. We are opposed to further arbitrary expansion and imposition of arrival/departure quotas to reduce system capacity. The proposal to create a market for slots will eventually force general aviation out of the major airports in this country.

Under the existing proposal, general aviation slots--"other" slots--at the high density airports are protected from the buy/sell provisions. But as the value of slots rapidly escalates in the free market environment, the "other" slots will become increasingly attractive and coveted as a commodity by the airlines. If there is a $500,000 value placed on a 6:00 p.m. airline slot at Washington National Airport, what is the value of a general aviation slot for the same hour? The answer is, it will be worth at least $500,000. The attraction of this scarce, yet unobtainable, resource will prove irresistible to the airline that wants "just one more slot" or to the regional carrier who wants to break into the big market. The pressure on policymakers to assign a slot commodity value and protect access to all phases of aviation will be enormous.

Eventually, the forces of the free market will allow scarce resources to be allocated to the highest bidder. General aviation will simply be priced out of the major airports of this country.

It is difficult for general aviation to show the same hard dollar value of its operations as do the airlines with their revenues, seat miles and enplanements. What guarantees would general aviation have to retain the "other" slots in the face of the sheer economic power of the airlines?

The implications of slot trading as a commodity have other negatives, also. These include the potential for city-pair monopolies, increased fare costs for airline passengers and restraint of new carrier entry into the market.

A related issue is that of safety. Proposals for slot allocation/transfer is an economic issue overlaid on the operational safety issue of ATC system capacity. It is dangerous to mix the profit motive so closely with a pure safety issue. Placing a price on an arrival or departure position may lead to slot congestion at an already saturated location, particularly during bad weather conditions.

The answer to the problem of slot allocaton appears to remain with the well established airline scheduling committees. Their work has provided a forum in which the real world issues and desires of the air carriers can be aired. Th problem of deadlock for these committees can be solved through binding federal arbitration. This method has proven an effective means of resolving other economic issues over time and appears to be a valid technique for resolving slot allocation disputes.

The root of the matter, however, lies with the Air Traffic Control system and airport capacity.

Congress enacted several pieces of landmark aviation legislation, the Airport and Airway Development Act of 1970, the 1976 Amendments to the Deregulation Act of 1978 and, finally, the 1982 Airport and Airway Improvement Act, all with the purpose of improving the nation's airport and airway system, increasing the effective management and utilization of the existing air navigation facilities in order to meet the current and projected growth of aviation. Madam Chairman, this simply has failed to occur. Increasing artificial system restraints--slots--and then distributing these to the highest bidder result in neither a fair nor appropriate long-term means of handling airport capacity problems. Additional runways and airport facilities are needed to answer the increase in airport demands.

Finally, airline deregulation was supposed to free the airline industry from burdensome regulation while increasing competition among carriers. It is ironic that the rush for passenger business through deregulation has brought us back to a new type of regulation in the form of slot allocation and sales.

The Aircraft Owners and Pilots Association strongly objects to the sale of arrival/departure slots. Instead, we strongly urge the FAA to move forward to expand existng airport runways and facilities. The major air carrier-served airports should have additional runways constructed where possible. These new runways should be 4,000 to 5,000 feet in length and be placed to optimize the flow of nontransport category aircraft. These, combined with properly designed high-speed turnoffs, optimum use of stub runways and helipads, and additional taxiways, will go a long way toward solving the airport capacity problems. This could be accomplished by earmarking a minimum of fifty percent of AIP funds for primary (major air carrier) airports to be used for true capacity enhancement.

We look forward to working with you on this matter and thank you again for the opportunity to make this statement.

Senator KASSEBAUM. Thank you. Mr. Stimpson.

Mr. STIMPSON. Thank you. Madam Chairman.

We are in concert with what Mr. Sheehan has said.

We think we are going down the wrong road in buy/sell policy. We think it is a bad policy, and we support S. 1966.

[The statement follows:]

## STATEMENT OF EDWARD W. STIMPSON, PRESIDENT, GENERAL AVIATION MANUFACTURERS ASSOCIATION

Good morning, Madam Chairman. We appreciate the opportunity to share with this committee the views of the general aviation manufacturers with regard to the buying and selling of "slots" at the high density traffic airports. The recently-issued Department of Transportation (DOT) rule providing for the use of slots is bad public policy. Consequently, we support S. 1966 to prohibit "buy/sell."

While the rule does not currently affect general aviation operations at high density airports, there is nothing to prohibit it from applying at some time in the future. If buy/sell is the national policy, it will undoubtedly spread to other airports throughout the nation as traffic grows. Foreign airports are also considering implementing such a policy. Consequently, our concerns are for the future, not today.

We recognize that the allocation of airline slots has been a difficult and frustrating task. We will not comment on this process or those aspects of S. 1966. However, we do believe that there are a number of reasons why buy/sell should be prohibited. In short, it is a bad idea whose time should not come.

1. The conveying by the government of a slot—which is a public asset—to a private entity with the inherent right to trade or sell that asset at a profit is a highly questionable means of controlling slot allocations on a fair and equitable basis in the public interest. Public rights are being transferred to private rights. Failure in the past to develop a workable slot allocation system does not, in our judgment, give the government the authority to resort to this type of market process. The legal justification for this mechanism is highly questionable.

2. Under the proposed rule, up to 35 percent of the slots could be unused—a deplorable provision in a scheme designed to optimize capacity utilization for all users at our busiest airports.

3. The new rule would freeze current air carrier slot assignments providing an immediate, salable asset to the holders. But it would not increase the capacity utilization of the airport; the same delays in slot utilization problems attributed to new slot holders in the past would likely continue.

4. General aviation's comments during this FAA rule making process have been totally ignored. General aviation is an element of our air transportation network that annually accommodates 130 million passengers—roughly 25 percent of our nation's 500 million air travelers. To overlook the concerns of this industry segment is irresponsible.

5. The new rule is permanent in nature without the flexibility required to adjust to anticipated changes in future mixes in air travel. It locks in the present mixes. For example, the FAA forecasts a disproportionate growth in the various air transportation modes. By 1995, the air carrier fleet is expected to grow by 30 percent, the commuter fleet by 69 percent, and general aviation by 37 percent. To lock-in future slot allocations based on today's fleet sizes is short-sighted at best.

6. This aviation growth is inevitably going to pose congestion problems at an increasing number of airports. The precedent that would be established by the implementation of this policy would have an impact for years to come. Moreover, the prospects of providing additional slots—which may have a market value estimated at $500,000 to $1 million each—to general aviation to accommodate anticipated future growth are very dim indeed. We strongly contend this is not in the public interest.

Madam Chairman, the congestion problems experienced at some of our major airports are real, but they are attributable to capacity limitations. The buy/sell proposal would not increase capacity at all. It is not the answer and should be rejected. What is needed is a significant, real increase in airport capacity as called for under the Airport/Airway Development Act. The billions of dollars in the aviation trust fund should be utilized for this effort instead of ill-founded buy/sell proposals.

Senator KASSEBAUM. Thank you.

That was very short and to the point. Mr. Cooke.

Mr. COOKE. Thank you, Madam Chairman.

My purpose in being here today is to persuade you to take a longer and deeper look at the buy/sell issue and the foundation of it, which is the high density rule itself.

We believe that congressional action to forestall this rule now is appropriate. But we also believe that the issues of insufficient capacity and the authority used by the FAA and the Department of Transportation to implement the high density rule need to be examined from the Congressional viewpoint.

We would sincerely ask you to take that long, deep look.

Thank you very much.

[The statement follows:]

## STATEMENT OF ROBERT A. COOKE, VICE PRESIDENT, OPERATIONS, NATIONAL BUSINESS AIRCRAFT ASSOCIATION

Madam Chairman and Members of the Subcommittee: Thank you for the opportunity to present this statement concerning slot allocations.

The National Business Aircraft Association (NBAA) represents business aviation in the United States. NBAA's membership consists of over 2,900 organizations operating more than 5,500 aircraft of all types in the daily, nation-wide pursuit of their business objectives.

Business aviation accounts for more than 30% of all non-carrier activity, providing on-call air transportation to all of our national airports and providing a vital link to the many communities across the country which have little or no air carrier service. The unique and irreplaceable abilities of business aviation to contribute to our nation's system of air commerce have been made manifest by the effects on commercial airline services occasioned by the passage of the Airline Deregulation Act in 1978. As we all are aware, deregulation has led to radical changes in the routes served by air carriers and, as part of the now prevalent "hubbing" practices, carriers have greatly reduced or abandoned many of their prior routes. The historical ability of corporate or business aviation to provide on-demand, direct service is thus of ever-growing importance in our deregulated environment. Without our national business aircraft fleet, many of our nation's smaller communities would be out of the mainstream of American economic life, and essentially cut off from an essential means of maintaining a highly productive local and national economy.

At the outset, we believe that it is critical that all concerned fully appreciate the gravity of the proposed DOT action under consideration by this Subcommittee. Any agency rule which presumes the ability to change the right to operate at our nation's airports from public property to private property in the absence of any legislative mandate or authority necessitates immediate congressional oversight. This egregious example of erroneous regulatory activity is simply one of a plethora of symptoms of a fundamental crisis in our aviation system.

Since its earliest years the aviation history of our nation has been marked by a commitment to advancement and growth which has produced a system unmatched in safety, convenience, variety and reliability. Notwithstanding the often heroic efforts of the men and women in our industry which have been, and will undoubtedly continue to be, of inestimable value to that process, the cornerstone of that remarkable success remains the historic ability of Congress to exercise its oversight capacity in a timely and often visionary fashion. Thus, beginning with the Air Commerce Act of 1926, and continuing through with the Civil Aeronautics Act of 1938 and the Federal Aviation Act of 1958, the industry and the nation have continuously benefitted from the fortuitous intervention of Congress at the truly critical stages of the system's development. Throughout this period, the hallmark of this remarkable record of congressional activity with regard to aviation has been a continuous rededication, whatever the contemporary crises, to the fundamental goal of continued growth and development of the airspace system as a public resource, and a consonant abhorrence for short-sighted regulatory activity which fails to contribute to that dynamic process.

Since 1958 Congress has carried forward this legacy with the enactment of the Airport and Airway Development Act of 1970, the 1976 amendment thereto, the Deregulation Act of 1978, and the most recent Airport and Airway Improvement Act of 1982. While each represents the congressional response to the problems and concerns then current in the industry, and are not without flaws, the essential, laudable purpose underlying each of these enactments is a commitment by Congress to solve existing problems, not to simply attempt to reconcile with them, and thus to maintain the process of growth through the continuation of airport and airway improvement programs and more effective management and utilization of the nation's airport and airway system.

Against this substantial historical background of achievement, therefore, it should come as no surprise that NBAA strongly opposes the continuation of an illegal regulatory program which affirmatively discourages incentives to expand airspace and airport capacity, presumes the ability to surrender arbitrarily to private, select interests operating rights which belong to the public by explicit direction of Congress, and which institutionalizes the FAA's own failure to meet its statutory mission of expanding capacity and promoting growth, rather than stagnation, in our industry.

NBAA submits that the genesis of the failure that has led to consideration of such a blatant insult to congressional authority, and the public at large, is directly traced to the continued existence of the illegal Federal Aviation Regulation (FAR Part 93) which has spawned the slot allocation and buy-sell phenomenon: namely, the high density traffic rules at Kennedy, LaGuardia, O'Hare and National. On January 23, 1986, NBAA filed with the FAA its detailed comments concerning the buy-sell and slot allocation rules, and a copy of those comments is attached. In short, the continued maintenance of the high density rules constitutes an ad hoc, arbitrary rationing or allocation of operating rights at the affected airports as between different types of users, i.e., carriers, commuters, and the patently deficient catch-all categorization of "other." The essential point, however, remains that this inherently economic judgment concerning the relative value or utility of different types of operations is wholly outside the statutory authority of the 1958 Act and flies directly in the face of the recognized purpose of the Deregulation Act. Notwithstanding this fact, the DOT, through the buy-sell slot rules, now seeks to irrevocably compound the high density error by granting private ownership rights in the navigable airspace, even though that airspace is in the public domain and subject solely to the will of Congress.

NBAA believes that it is absolutely critical that this Subcommittee address the issue of the apparently unlimited authority presumed by the DOT to stem from the charge to promote the "efficient" use of the navigable airspace. The policy mindset of the Executive branch of government which has so grossly distorted that original, limited delegation by Congress has, at its origins, the accumulated effects of the high density/slot mentality on the otherwise clearly defined mission of the agency.

Those charged with the responsibility of implementing the congressional directives of the 1958 Act, the 1970 Airport and Airway Development Act, the Airline Deregulation Act of 1978, and the Airport and Airway Improvement Act of 1982 have responded by illegally and artificially constraining aviation activity at the so-called high density airports for nearly 20 years without ever having proposed a plan to end that illegal activity, and now purport to institutionalize that system by usurping Congress' role as proprietor of the airspace in the name of the public.

While NBAA agrees that congressional action forestalling this rule is required, we would point out that the larger problem of insufficient airspace capacity must be the focus of legislative efforts if we are to avoid similar regulatory aberrations in the immediate future. NBAA wishes to advance solutions to this recurrent problem, not only in the limited area of slots and high density, but in the establishment of mechanisms to deal with the overriding capacity constraints occasioned by local airport restrictions aimed at reducing exposure to aircraft noise.

First, with regard to the slot rule presently under consideration, NBAA urges Congress to enact legislation in a form which:

(1) forecloses any grant of private landing rights, or the buying or selling thereof, by the DOT or FAA at the 14 C.F.R. 93 Subpart K facilities, or any other airport,

(2) mandates the revocation of the high density rules in their entirety within five years from the date of passage of the legislation, and

(3) specifically restricts and forbids any further illegal, economic regulatory activity of the industry by the DOT or FAA in the name of "efficiency."

The record of the high density rules and the slot system at these four airports provides nearly twenty years of indisputable evidence that arbitrary interference by the government in the marketplace creates massive disincentives for the fulfillment of the congressional commitment to growth at those or any facilities in our system. Advance notice of the termination of the high density rules and a commitment to foreclose further extensions of government agency meddling in the marketplace will, in stark contrast, provide precisely the type of incentives and impetus required to promote positive activities and thus restore the vitality of the system. Of equal importance, such legislation would cure the de facto usurpation by the Executive branch of the fundamental authority of Congress over our nation's airspace, and guide it back to its proper course and sense of purpose.

While we believe the abolition of the high density rules would resolve one aspect of the overall capacity problem, the industry has long been aware that the truly critical problem affecting capacity is the explosive proliferation of uncoordinated, locally-enacted airport restrictions having as their aim the diminution of aircraft noise. NBAA believes that the multiplicity of inconsistent ordinances and restrictions which are stifling our aviation system have been precipitated by the absence of a federally-imposed, nationwide standard concerning the permissible noise abatement activities of airport proprietors.

We therefore further propose that Congress through appropriate legislation authorize and direct the Secretary to construct a system for mandatory, binding review of all noise-related airport restrictions to insure the continued integrity of the flow of interstate commerce and the safe and efficient movement of traffic within the national integrated airport system, to be strictly guided by a legislative-

**ly-defined standard reflecting the cogent and proven approach currently applied by the United States Court of Appeals in the Second Circuit, exemplified by the decisions in *British Airways Board* v. *Port Authority of New York*, 558 F.2d 75 (2d Cir. 1977) ("Concorde I"); *British Airways Board* v. *Port Authority of New York*, 564 F.2d 1002 (2d Cir. 1977) ("Concorde II"); and applied in *United States* v. *County of Westchester*, 571 F.Supp. 786 (S.D.N.Y. 1983).**

**These cases stand for the proposition that airport proprietors are limited in the scope of their noise abatement efforts to the promulgation of reasonable, non-arbitrary, non-discriminatory and non-overboard noise regulations establishing reasonable levels of noise which may be generated by aircraft utilizing their facility. In order to exercise lawfully this authority proprietors are required to actually monitor noise, assess community impact, and explore all reasonable alternative noise abatement techniques prior to considering restrictions on operations. Noise regulations, to be found fairly required, would have to be based upon actual testing or monitoring for a period of at least one year, covering all four seasons. We would be more than pleased to provide for the Committee a detailed proposal describing how such a law would function effectively.**

**We believe that this proposed legislative package would dramatically assist in the diminution of both the extant and prospective capacity crises affecting our system of aviation transportation. The establishment of a clear, consistent nationwide process and approach for dealing with capacity constraints will be of unquestionable value—not only for planning purposes—but also for the day to day movement of commerce through our airways.**

**NBAA remains ready to assist this Subcommittee in its efforts to carry forward the congressional tradition of pragmatic and innovative solutions to the problems affecting our aviation transportation system. Thank you for allowing us the opportunity to present this statement.**

Senator KASSEBAUM. Thank you.

That point was raised, as you head earlier, by People Express.

Mr. COOKE. I was very pleased. I suppose that means that we are strange bed fellows because we have been at odds with them over other issues. But I was very pleased to see their understanding of the issue was quite thorough.

Senator KASSEBAUM. Now, all three of you, of course, represent general aviation, and yet, general aviation will be treated separately in the department's approach to this, and with the guarantees that they will not be affected.

Is that correct?

Mr. STIMPSON. That is our understanding. Yes.

Senator KASSEBAUM. But you still question it?

Mr. COOKE. Yes, Madam Chairman.

I would point out that there are no guarantees. The most recent change to the high density rule occurred a few years ago where, in fact, slots were changed. The general aviation slots at JFK airport were changed, and there is 1 hour at JFK today where general aviation aircraft are prohibited from operating.

Mr. STIMPSON. I think that is our point, Madam Chairman, that we are starting to go down a road here which, as Mr. Sheehan pointed out, if that slot is worth $1 million for an airline, why isn't it worth $1 million for general aviation? Down this road that we are starting to proceed, we are not only talking about four airports, but we are talking about many more airports potentially in the future, and also internationally, many countries are looking at this very seriously, too.

So, it is a much broader issue than just four airports, the way we look at it.

Senator KASSEBAUM. Yes, I think that is very true. I think in many ways it should be a broader issue than the four airports because it is very much a part of the changing system. We would be short-sighted if we do not view it as something that will have an effect far beyond the four airports.

I thank you very much and will assure you that we will do all that we can to move S. 1966, not that it is without problems. I would hope that the committee, as a whole, will carefully review it for any improvements that might be made.

Mr. STIMPSON. I had a longer statement for the record, which I hope will be inserted.

Senator KASSEBAUM. Yes, it will.

Thank you all very much for your patience.

Mr. Leonard, thank you very much for waiting this long.

It is a pleasure to welcome Mr. John Leonard, president, Ransome Airlines, accompanied by Alan Stephen, executive vice president, Operations, Regional Airline Association.

It is a pleasure to welcome both of you.

## STATEMENT OF JOHN LEONARD, PRESIDENT, RANSOME AIRLINES, ON BEHALF OF REGIONAL AIRLINE ASSOCIATION; ACCOMPANIED BY ALAN STEPHEN, EXECUTIVE VICE PRESIDENT, OPERATIONS

Mr. LEONARD. Thank you, Madam Chairman. It is a pleasure to be here on behalf of the membership of the Regional Airline Association.

We appreciate this opportunity to comment on the recently published FAA high density rule amendment that permits us to trade, sell, or lease slots, rather than allocating by a scheduling committee, and on the pending legislation that would bar implementation of that amendment.

The RAA supports the creation of an after-market in slots in order to make the existing process more fair to commuter air carriers trying to be competitive under deregulation.

We came to this position reluctantly, after the regional airline scheduling committees became increasingly unable to accommodate their collective slot needs.

Let me explain why.

Understandably, incumbent commuters are opposed to giving up slots to new entrants, slots these incumbents may have operated for years and for which they may have made substantial investments in market development, in aircraft, and in personnel.

New entrants understandably cite their rights to these slots based on the importance of starting competitive new services. Incumbents counter by citing the generally poor experience with new entrant commuter airlines that have received slots and subsequently failed to use them. Incumbents and new entrants alike are frustrated by their inability to build up existing levels of service since few slots are ever available for such purposes.

Our committees tried to deal with such pressures. They established extensive rules to prevent sham operations from receiving slots and not using them, use or lose rules that govern how soon and how often slots must be used, and rules which provide for slot allocations by lottery in the event the scheduling committee deadlocks.

Our rules also recognize and provide for special treatment of new entrants.

Slot buy/sell does nothing to alleviate high density rule restrictions or to increase airport capacity. But it is, in our view, the least onerous step that can be take to balancing competing slot needs, given the continuation of constraints.

It provides a measure of fairness that no regulation, administrative mechanism, or scheduling committee can ever achieve.

We have tried deadlocks, we have tried givebacks, trades, and scheduling adjustments in search of equitable solutions to slot allocation.

I can assure you, having been personally involved in all of them, that none of these work very well for very long.

The RAA predicated its support for the creation of a slot aftermarket on its belief that the present scheduling committee process could be improved by permitting carriers to better rationalize their needs by buying, selling, and leasing slots in addition to the current process of slot trading.

Slot trading, and not slot buy/sell, incidentally, will continue to be the dominant feature under the FAA's new rule, as carriers accommodate each other's day to day needs to fine-tune flight schedules, based on gate availability and timing of interline connections.

The aftermarket will permit carriers to adjust service levels rather than to e locked in to current slot holdings. It will provide permanence upon which carriers can make long-term investment decisions in service and equipment.

Further, the FAA rule implementing the slot aftermarket contains important safeguards. For example, it recognizes that sizeable investments have already been made by incumbent carriers and that redistribution would be disruptive, particularly of small community air service.

In our view, S. 1966 is a step backwards. Like buy/sell, this legislation does nothing to alleviate airport constraints. It fails to recognize that the regional airline scheduling committees have worked differently than those representing the major carriers, that the commuters have accommodated a substantial number of new entrants at Washingon, Chicago, and New York.

It would require an unspecified volume of slots held by incumbents to be placed at risk each time the scheduling committee meets and fails to achieve agreement. No member airline of the RAA, incumbent or potential new entrant, will support legislation that would continually disrupt slot holdings and therefore schedules upon which the travelling public must have confidence.

Much opposition to slot buy/sell comes from small communities concerned over losing air service. The redistribution provision of S. 1966 will do far more to curtail small community air service than the FAA's rule. Incumbent carriers forced to give up slots will do so in the marginal markets they fly.

Opponents of buy/sell also charge that it results in an unconscionable windfall for the carriers currently utilizing slots. Those opponents fail to recognize that the incumbent carriers have made long-term invesuments in the markets that these slots represent, investments in aircraft, operating losses, gates, terminal facilities, and personnel.

Few airlines are likely to abandon such commitments made over many years. For these incumbents, the value of the slots is already "booked"in passenger goodwill and in strategic market position they have worked hard to build up.

In comparison, the windfall value of slots is small, indeed.

For most commuter carriers, the value of their slots offers little incentive to sell.

The Washington National Regional Scheduling Agreement is a living laboratory of S. 1966. Failure to agree on allocation imposes a lottery which takes from the incumbents and gives to new entrants. To protect against catastrophic slot losses, no carrier can lose more than 25 percent of the slots it started with when the Washington National Regional Scheduling Committee was signed into force.

Today, after 3 years of using the deadlock lottery, the results suggest why S. 1966 will be a failure of public policy. Large incumbents have all reached the maximum limit of their slot losses. Twenty new entrant airlines have received slots. Only three continue to operate at Washington National today.

Frankly, the slot bonanza created by this agreement encouraged participation by marginal operations which delayed legitimate new entrants access and resulted in market turmoil as the committee redistributed slots vacated in large numbers by them.

What purpose is served by institutionalizing into law such practices?

We share your concerns that slot buy/sell may impede capacity solutions at high density rule airports, or spread to ever more airports. Perhaps even worse, it may lead to more perverse market based mechanisms, like auctioning. We have raised these very real concerns each and every time we have commented on slot aftermarkets.

We have also stated that our decision to support buy/sell was reached reluctantly and only after our good-faith attempts in slot allocation through scheduling committees led to dead ends.

We see buy/sell as a stop gap measure to alleviate scheduling committee impasse. It does nothing to improve capacity at High Density Airports even as it perhaps signals of "an easy way out" for other operationally constrained airports.

Briefly, today, I have tried to provide insight into the complex problems associated with slot allocation and how regionals have given an extra measure of effort to make

I have tried briefly today to provide some insight into the allocation problems that we have dealt with as regional carriers and I thank you for your interest in the views of the Regional Airline Association. Slot buy/sell at least permits carriers to adjust service levels and to make rational long term investments. In this regard, it is an improvement over the way we allocate access rights by scheduling committtees. S. 1966 would have us return to a process that has proven unworkable. It would create uncertainty for carriers and periodic service disruptions for passengers. It is no substitute for increasing capacity at high density airports, a priority to which we all must focus unrelenting attention. We urge that S. 1966 not be made into law.

Thank you for your interst in the views of the Regional Airline Association.

Mr. Stephen and I are pleased to answer any questions that you may have.

Senator KASSEBAUM. Thank you very much, Mr. Leonard.

I would agree with you that S. 1966 doesn't do very much to address airport capacity. Nor does the DOT proposal, however .

Mr. LEONARD. That's correct.

Senator KASSEBAUM. One proposal that would directly address capacity would be AOCI's partial auction, which puts money back into airport expansion, as well as the Aviation Trust Fund. How would you view that proposal? Have you had a chance to study that?

Mr. LEONARD. I haven't had a chance to study that as thoroughly as I would have to in order to make a comment on it.

Mr. STEPHEN. Excuse me, Madam Chairman, may I comment?

Senator KASSEBAUM. Yes.

Mr. STEPHEN. I think it is very important that the issue is not money at these airports. At these four airports, the airlines that serve them are perfectly capable of funding the type of investment that will increase capacity.

We have put into place 17 years ago a high density rule which has proven totally inflexible, despite the ability of the air traffic control system to generate tremendous productivity improvements.

There are 60 slots an hour at Washington National today and there were 60 slots an hour 17 years ago. Other airports 17 years ago also faced similar constraints. They weren't put under the high density rule, and they have continued to be able to grow, with additional runways, additional facilities, additional gates. And they have been funded by the airlines that serve those airports.

I think what we are saying is if money wre the problem, there is money in the trust fund, and I think the airline industry is prepared to take whatever steps are necessary—at these airports, in particular, since they are so valuable. The idea of turning money back over to the airports—the constraint is in the political arena that we have, to continue these restrictions. We really have not tried as hard, perhaps, a we should have, to see if we can remove them.

I know that our members who serve Chicago, for example, believe that we should be doing some very real things to try to take that airport out of the high density rule. It may be the time has come.

Senator KASSEBAUM. I think that has been expressed here this morning. But take National, for instance. The reality of the situation is that National is just not going to expand.

Mr. STEPHEN. Yes, that is correct.

Again, what we have in Washington is Dulles is finally taking off—excuse the pun.

Senator KASSEBAUM. That's right.

Mr. STEPHEN. I would hope that within a couple of years National will always be an origin and destination service market for people coming to Washington. But as Dulles continues to develop, with United having a hub there, and Presidential, and we have a hub at Baltimore, too—you can't forget Baltimore as it is important to Washington as well—it may be that the demand for future service will increasingly be accommodated by the two other airports and National, too, will be able to come out of the high density rule because demand for access there may have peaked, with time.

Senator KASSEBAUM. Do you agree, however, that buy/sell will go beyond the four high density airports that we are addressing at this point, and become national policy? Would this cause any problem?

Mr. STEPHEN. Every time we have come on this statement, on this issue, we have said that this is something that cannot be allowed to proliferate to other airports for other reasons. It is not necessary.

The thing that drove the high density rule was congestion. Just take an airport like Atlanta or one like Dallas. You have one or two airlines that are the major users of those airports. What we have seen when we had the Schedule D peaking exercise about a year and a half ago is as long as the major airlines that operate these airports schedule in a way which does not create congestion, does not put an over-burden on air traffic control, the high density rule type concept is unnecessary.

I do not want to speak for the major airlines or for other airports, like, for example, AOCI, but it certainly would be a terribly thing to see this thing expand. I think it is the last step to have to admit defeat, that we need the high density rule at other locations. I think our association has been very firm on that position for a very long time.

Senator KASSEBAUM. Can you see an advantage to the regional carriers in allowing communities to buy or lease?

Mr. LEONARD. One of the problems that community ownership of slots would present to us is since we deal with such a limited slot base, in the case of Washington, where we have 13 an hour, part of the advantage that we see in the FAA proposal is the freer movement of slots between carriers, to gain some fluidity.

As I said, I think the movement will continue to be more toward trading than toward buying and selling.

If you were involved with community ownership, there would be less inclination on the part of those communities to trade or free up slots for the alleviation of the gate problems and the connect adjustments that we have to make.

Senator KASSEBAUM. Thank you very much.

We appreciate your testimony.

That concludes our hearing.

[Whereupon, at 12:57 o'clock, p.m., the subcommittee adjourned, to reconvene upon the call of the Chair.]

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# ADDITIONAL ARTICLES, LETTERS, AND STATEMENTS

## STATEMENT OF HON. HOWARD M. METZENBAUM, U.S. SENATOR FROM OHIO

I appreciate having this opportunity to express my strong support for Senator Kassebaum's efforts to stop the Department of Transportation's rule permitting the buying and selling of take-off and landing rights at Washington National, Chicago's O'Hare and New York's Kennedy and LaGuardia Airports.

The DOT rule, scheduled to take effect April 1st of this year, is unjustified and illogical public policy. Sold under the banner of free enterprise and airline deregulation, this buy-sell rule is nothing more than a give-away of public property for private gain. The rule is being offered as the best solution for allocating limited airspace at these four congested airports. Nothing could be further from the truth.

Instead of aiding entry into the airline business—the cornerstone of deregulation—this DOT rule will give a select group of airline companies an unfair advantage over other airlines. Under the DOT rule, an incumbent airline operator will be able to sell his or her airport slot for profit to any other operator that wishes to buy it. DOT wants us to believe that market forces will prevail and that new entrants will pay a fair price for this valuable slot.

DOT ignores some unpleasant—but very real—concerns.

Airspace at National, O'Hare, Kennedy, and LaGuardia is limited. What will the price be for airport slots in such closed markets? Will new competitors be able to afford them? What will this mean for small commercial carriers and start-up airlines?

Will incumbent carriers choose to keep their slots, no matter how "inefficient" it is for them, rather than sell or lease slots to potential competitors? Won't this reduce service at these airports?

And if a sale takes place, won't these costs be passed on to consumers?

The slot allocation problem at these airports is a serious one that must be addressed. The current scheme of having committees, composed of airlines that operate or wish to operate at airports, allocate limited slots is not working. But we ought to seek ways to ensure that we have more competition at airports, instead of handing a few airlines an economic windfall.

I am confident that the Senate Subcommittee on Aviation will give close scrutiny to other more effective methods for allocating air slots. Government allocation, auctions, lotteries, or a committee system with a tough dead-lock breaking mechanism (as envisioned by Senator Kassebaum's S.1966) all deserve careful consideration.

One issue is clear, however—DOT's buy-sell rule will do more harm than good. It is anti-competitive, anti-consumer and it would set a dangerous precedent for the allocation of slots at other airports in the future. Congress should act promptly to rescind this DOT rule.

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## STATEMENT OF EDWARD J. DRISCOLL, PRESIDENT AND CHIEF EXECUTIVE, NATIONAL AIR CARRIER ASSOCIATION

Madam Chairwoman and Members of the Committee: We are pleased to have this opportunity to present to you the views of the members of the National Air Carrier Association with respect to S. 1966, a bill to provide for efficient and equitable use of operating rights at congested airports as well as for other purposes. We also appreciate the opportunity to comment on the Final Rule promulgated by the Secretary of Transportation with respect to the buying and selling of slots at high density airports.

S. 1966, as we understand it, would require the Secretary of Transportation to re-establish the Scheduling Committees for the allocation and re-allocation of slots at high density airports. It would require the Secretary to implement a "use it or lose it" rule and to establish within each Scheduling Committee a deadlock breaking mechanism.

The bill would repeal any rule or regulation or order inconsistent with the provisions of S. 1966 that was issued between December 1, 1985 and the date of enactment of the proposed Act. Thus, if enacted, S. 1966 would nullify the effects of the Final Rule issued on December 16, 1985, authorizing the buying or selling of slots effective April 1, 1986. This legislation, as we view it, would continue the operation of the Scheduling Committees in the identical manner in which they have been operated over the past 15 years with the addition of the "use it or lose it" provision and a deadlock breaking mechanism.

Madam Chairwoman, we opposed any buy-sell rule because we felt it was not necessary to achieve the equitable distribution of slots, that it would be unwise to have such a system as it would enable the large, well-heeled airlines to dominate the operations at these high density airports and, like you, we recommend a firm policy on "use it or lose it" as well as a deadlock breaking mechanism.

We fully subscribe to the provisions of S.1966, as we understand them, and would hope that when enacted, the legislation would make it clear that all air carriers must be treated in a nondiscriminatory manner, the same as they were during the operation of the Scheduling Committees and that slots be available for all air carriers in order to satisfy their transportation needs.

The Final Rule of the Secretary of Transportation as issued on December 16, while authorizing the buying and selling of slots domestically, established an allocation system by the FAA for international services by air carriers as well as an allocation of slots for essential air service programs.

Subsequent to the issuance of this rule, the FAA issued an oral interpretation contradicting a prior interpretation by that agency which confirmed that charters by air carriers were authorized slots under the provisions of 93.217 of the Federal Aviation Regulations. The contradictory interpretation issued on January 15 as reported in the Aviation Daily of that date stated that the provisions of Sec. 93.217 of the FARs only applied to scheduled air carrier operations. The oral interpretation reversed a policy that had been in existence for over 15 years which established a category of users as "air carriers" and included both scheduled and charter air carriers. The FAA oral interpretation was issued notwithstanding the clear language of the Rule, 93.217, which provided for an allocation of slots for all international operations, not just scheduled operations. This interpretation reversed, as I have said, a policy that has been in existence for 15 years without laying any foundation for such a change or giving any rationale as to the reasons for such a change and without adhering to the due process requirements of the Administrative Procedures Act.

I am appending hereto as Exhibit 1, [1] a copy of the NACA comments submitted to the FAA dated January 24, 1986. This statement definitively sets forth our position with respect to the arbitrary manner in which the oral interpretation was issued.

To deny one segment of the air carrier industry equal access to international slots will cause, not only severe problems for U.S. carriers in their ability to market charter air transportation, but it will also cause problems for foreign charter air carriers in not being accorded access to U.S. airports. Many of the bilaterals, currently in existence, between the United States and foreign countries guarantee access for the "designated carriers" of both countries and no differentiation is made between charter or scheduled carriers. Thus, the denial of access to foreign charter air carriers can violate bilateral agreements.

From a practical business standpoint, both scheduled carriers operating part charter service which many do internationally, and U.S. air carriers operating planeload charter services compete for the same business. Tour organizers who organize and operate large charter programs procure their transportation services from air carriers on a competitive basis. If one segment of the industry is able to operate and confirm to a tour operator a firm schedule for part charters because it is entitled to slots while the air carrier that operates full planeload charters is unable to confirm that schedule because it is not entitled to slots, then the scheduled air carrier has a preferential position. The lack of equal treatment of charter air carriers will substantially impair their ability to continue to provide low-cost air transportation services. The restriction resulting from the oral interpretation violates Sec. 401(n)(2) of the Federal Aviation Act of 1958, as amended.

Normally, as you know, slots for air transportation services, both scheduled and charter, are forecast and schedules definitized six (6) months in advance of the date of operation. The Scheduling Committee has worked and established the slotting of carriers on a winter season and a summer season. In grandfathering the carriers for slots at the high density airports, the FAA grandfathered slots as of December 16, 1985, which covers only the winter season. The summer season is usually at a much higher frequency and different times of operations than the slots that were grandfathered for the winter season. Thus a disparity exists, which must be rectified so that carriers can operate their programs and schedules are guaranteed by seasons of the year.

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[1] The exhibit is in the Committee files.

Charters, as you know, operate on a firm fixed schedule, in part; and others operate under ad hoc arrangements, slots for which are obtained on an individual basis through a Scheduling Committee approach.

When all air carriers met under the Scheduling Committee system, slots were identified merely as air carrier slots—no indication whether they were for charter or scheduled service. All of the carriers participating in the slotting process had to agree under the terms of the CAB and DOT approval of these committees. No carrier could require another to change a time. It had to be on a voluntary basis; and thus all carriers sought to accommodate one another to obtain agreement to maximize the use of available slots.

Subsequent to the establishment of the allocation of slots under firm and forecast timetables, the Scheduling Committee kept an operations center functioning whereby a carrier who had a short notice charter or an additional scheduled operation could obtain a slot that was not being utilized merely by calling the Reservations Center or communicating with it by wire. This enabled the ad hoc operations to be conducted with a high degree of efficiency and insured that slots that would otherwise go unused were made available for these ad hoc operations.

We have seen nothing to date, under the Final Rule and the procedures in effect by the FAA, which gives us any hope that a system similar to this will be continued. We are aware that after the publication of the Final Rule, the FAA did request the scheduling committee to continue its operation with respect to the allocation of charter slots at Kennedy, and it is our understanding that shortly they will be embracing O'Hare in Chicago within that rule and will continue the function of the Scheduling Committee for the allocation of the charter slots through March 31.

Madam Chairwoman, we support S. 1966. We believe it is essential to reestablish the Scheduling Committee approach in order to safeguard the interests of all air carriers and to make sure that all, both large and small, have equal access to the space controlled by the Federal Government. To accord one group grandfather rights to slots which subsequently they can sell for a profit if they can't use them is unjust enrichment for certain carriers to the detriment of other carriers. The Aviation Daily has reported that slots may sell for between $750,000 and $1 million each. This will produce a high cost to the new entrant, the carrier who doesn't have slots, and will provide a windfall to those who by reason of having been operating at the airport, are given this valuable commodity (slots) gratis and who under the rules will be able to sell, lease or dispose of them in any manner they see fit.

We at NACA believe that a system that treats all air carriers equitably is required. We trust that S. 1966 will be enacted into law and we trust that with a firm "use it or lose it", a deadlock breaking mechanism, the Scheduling Committees will be able to function in the efficient manner in which they have functioned over many of the past 15 years.

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## STATEMENT OF LEWIS C. MURPHY, MAYOR OF TUSCON, ON BEHALF OF THE UNITED STATES CONFERENCE OF MAYORS

Madam Chairwoman and members of the Subcommittee on Aviation, as Mayor of Tucson and Chairman of the U.S. Conference of Mayors Transportation and Communications Committee, I am pleased to submit this statement for the record as you consider appropriate national policy for the allocation of airport take-off and landing slots.

The U.S. Conference of Mayors has reviewed the statement submitted by the Airport Operators Council International (AOCI) and finds it to be generally consistent with the preliminary views of Mayors who have expressed interest and concern to date in this area.

Over the course of the next several weeks, the U.S. Conference of Mayors will be developing specific policy recommendations for its members consideration. This will initiate at the staff level through our Urban Transportation Conference and will culminate at our Annual Conference of Mayors in June. But because it is important to address the takeoff/landing issue before this Committee and other forums now, please allow me to make some preliminary observations which I believe will ultimately form the consensus view of most Mayors.

Our basic concern with the Administration's plan to grandfather takeoff and landing rights to incumbents at high density airports is that it awards a public good to a private concern which did not create the value of the good. Mayors generally are supportive of marketplace solutions to the allocation of scarce resources. But proposals such as that put forward by FAA work to essentially unbalance the playing field in favor of the incumbent carriers.

Moreover, by grandfathering existing rights to the incumbents, and permitting them to sell or buy among themselves to the highest bidder, the past and future capital development and capacity needs of airports are ignored. With the pending tax reform legislation, and the Gramm-Rudman-Hollings budget deficit reduction measure squeezing airports abilities to raise capital for renovation and expansion purposes, initiatives designed to create and redistribute the value of landing rights should bear some relationship to airport capital needs in the years ahead.

Moreover, a grandfathering of incumbent rights with full authority to redistribute slots, could work to freeze out the access of new or smaller airlines which require landing and take-off rights to serve smaller and medium sized communities.

Senator Kassebaum has proposed a sensible solution to the problem we now face stemming from the Administration's proposal. S. 1966 would suspend the FAA proposed policy and instead replace it with a reform of the Committee system currently used by airlines to allocate slots among themselves. Importantly, a new procedure would be used to ensure that deadlocks could be broken and that a "use-it-or-lose-it" policy is established.

Several goals must guide policy for the allocation of take-off and landing slots": 1) equity to new and smaller carriers, as well as incumbents; 2) ensuring adequacy of service to all cities; and 3) developing a system which responds not only to the financial concerns of certain carriers, but also to the safety and development needs of concerned airports. Towards these ends, it seems a more sensible approach to pause, withhold the implementation of the proposed policy, and carefully review more workable alternatives.

Madame Chairwoman, the U.S. Conference of Mayors appreciates the opportunity to present a preliminary assessment to you and looks forward to closely working with the Subcommittee in the days ahead.

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## STATEMENT OF CLARK H. ONSTAD, VICE PRESIDENT, TEXAS AIR CORP.

I am Clark Onstad, Vice President, Texas Air Corporation. Texas Air is an airline holding company which is the majority shareholder in Continental Airlines and the sole shareholder of New York Air.

My testimony is based upon my own immersion in the subject of slot allocation at least since I became Chief Counsel of the FAA in 1977, a position I held until 1981. In addition, since that time I have been involved in almost every aspect of slot allocation on behalf of Continental Airlines and/or New York Air.

For several years, Texas Air and its subsidiaries have supported "buy/sell" as the best of bad alternatives for the allocation of slots. Anytime there is a shortage, the economics of scarce resources are such that there are no good alternatives—only less bad alternatives.

Texas Air's support for the buy/sell concept does not prevent us from having serious concerns for the way in which such a regime may be implemented. [1] Furthermore, Texas Air recognizes the possibility that buy/sell will result in an undue concentration of slots in the hands of one or two air carriers. However, the lessons of the past demonstrate that the scheduling committees have essentially been nonfunctional since airline deregulation became a marketplace reality. It is time to give buy/sell a chance. Secretary Dole is to be commended for making the decision to let the marketplace work.

In my testimony I would like to make the following points: (1) the scheduling committees are long dead; (2) the absence of buy/sell has resulted in a black market; (3) the limited availability of buy/sell has enhanced competition and the efficient utilization of the air space; (4) buy/sell is fully consistent with the statutory scheme; (5) no one likes paying for slots but placed in the context of the airline industry as it exists today, the issue of buy/sell is receiving disproportionate concern.

Before addressing each of these points in detail, three other preliminary observations merit attention. First, there are ways to alleviate the scarcity of slots at each of the slot constrained airports. Equally important, there are measures that can be implemented now that will prevent other airports from becoming slot constrained. Addressing these matters would far better advance the national air transportation system. Second, much of the political opposition to buy/sell seems to come from the

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[1] Both Continental and New York Air have filed comments objecting to certain aspects of the Department of Transportation's proposal.

airport segment of the aviation community. One can only wonder if this opposition is not engendered by an underlying desire of certain airport operators to allocate slots or to receive the revenue from the sale of slots. Such a result would surely be destructive to a national air transportation system. Finally, I would point out to the Subcommittee that my own initial reaction, when confronted with the notion of buying and selling slots in 1978, was total opposition. However, having studied the other alternatives in great detail, I can only conclude that Secretary Dole's initiative to give buy/sell a chance should be allowed to proceed. Admittedly, it needs minor modification. However, if major problems arise, they can be addressed by the Department of Transportation (DOT) since it will have continuing jurisdiction and, the antitrust laws are also a recourse.

### A. THE SCHEDULING COMMITTEES ARE LONG DEAD

For a short period after the passage of the Airline Deregulation Act, scheduling committees continued to function for two reasons. First, new entrant pressure took time to build; it required time to bring the companies into being as viable market forces. A corollary phenomenon is that new entrants did not spring up in all the slot controlled airports at the same time nor at the same magnitude; and, demand constraints varied by airport. The proof of these observations is that the first scheduling committee to break down was the Washington National Airport Scheduling Committee with the entry of New York Air; at the same time, the other scheduling committees continued to function. See *Northwest Airlines, Inc.* v. *Goldschmidt*, 645 F 2d. 1309 (8 Cir. 1981).

The second reason was the fear of what the government might devise if it were to take over the process. Time has eviscerated this second factor as a moving force behind scheduling committee concensus action. Over time, the pressure for entry from both existing carriers and new carriers has become so strong that the incumbent carriers believe any government action, within the range of political acceptable governmental behavior, cannot be any more painful than succumbing to all the demands for entry.

The scheduling committee process broke down only after significant efforts to save it by the "haves." For as long as the scheduling committee was in place and working, the "haves" were able to lessen the magnitude of give-ups and exercise a great deal of control over the actions of competitors. For this very reason, substantial efforts were expended to find an impass breaking mechanism acceptable to interested parties. Appendix A lists some of the mechanisms that were proffered and, it contains a brief analysis of various flaws in each. Suffice it to say that no concensus was reached on any of these simply because each mechanism was too flawed to achieve acceptance.

In sum, Continental and Texas Air have expended literally thousands of man-hours in scheduling committee related activities in the last 6 years, most of which has been an exercise in utter frustration. I think it is fair to say that in spite of what you might hear from others here today, it is beyond doubt that the scheduling committee concept has no vitality left in it. Even if the deadlock breaking mechanism currently being advanced is to be adopted, it is only a short breathing space before the committees are subjected to so much pressure for increased slots by one or more carriers that they eventually break down.

### B. THE ABSENCE OF A GOVERNMENT SANCTIONED BUY/SELL HAS RESULTED IN A BLACK MARKET IN SLOTS

Starting with the post-PATCO strike slot restrictions which, except for a brief period, required that slots be acquired from other carriers only in exchange for other slots, a black market in slots arose. The FAA's ability to police he black market was essentially nonexistent despite the best of intentions.

In the airline business, there are many forms of currency. Unfortunately, in situations where cash is prohibited, "currency" includes many items which tend to favor only the largest carriers. This currency includes computer systems, gates, handling agreements, fueling, etc.—normal intercarrier transactions which it is virtually impossible for the FAA to trace to a slot transaction. One notable example of the rise of currency other than money was revealed when Empire set out in a Security and Exchange Commission filing that it had transferred slots in exchange for computer reservation system consideration. I would point out that the Empire transaction apparently took place during the buy/sell experiment; it is being used simply for illustrative purposes.

How many black market transactions actually have taken place is not known. The fact they have occurred is general knowledge in the industry.

The existence of a black market should not surprise the Subcommittee. It is well known that shortages which the government attempts to regulate lead to a black market. To cite but one example, the Federal Government established a major enforcement effort during World War II to stop the black market in ration coupons; this was largely unsuccessful.

Given the need for the FAA to concentrate on matters of safety and expanding capacity, there is a strong public policy question as to whether the Subcommittee should endorse legislation that diverts FAA resources to policing a black market.

### C. THE LIMITED AVAILABILITY OF BUY/SELL HAS ENHANCED COMPETITION AND THE EFFICIENT UTILIZATION OF AIRSPACE

I will not attempt to evaluate the economic value of all of the slot purchases made during the experimental period but instead, will concentrate on an illustrative transaction. During the experimental buy/sell period, New York Air purchased Washington National Airport slots from Air Florida. Air Florida had been operating these slots on a very marginal basis but the economics were such that unless it received value for the slots it was only marginally better to operate the slots. In short, the lack of a market mechanism prevented the reallocation of the slots to a higher and better use.

As a result of purchasing the slots, New York Air was able to increase service between Washington National and Newark, New Jersey. Two other carriers had abandoned this market without relinquishing slots. New York Air was actively attempting to get slots to meet demand. In addition, New York Air was eventually able to change its service pattern to offer LaGuardia service every hour on the half hour. This compares to the previous practice of competing with the Eastern Shuttle offering flights each hour on the hour.

Both of these actions increased service to the public and neither would have been available through the scheduling committee process. It simply has not been possible for an incumbent to obtain 8 slots from the scheduling committees.

Overall, anytime a significant number of slots are needed to take advantage of an opportunity or to correct a competitive imbalance, the scheduling committees are not the answer. Only buy/sell affords this public benefit.

### D. BUY/SELL IS FULLY CONSISTENT WITH THE FEDERAL AVIATION ACT

The Subcommittee is, of course, fully aware of the statutory provisions within the Federal Aviation Act. I would only pause here briefly to highlight for the Subcommittee the way in which buy/sell meets the statutory mandates.

The essence of the statutory mandate Congress established in 1978 is a placement of maximum reliance on competitive market forces. Section 102(4) of the Federal Aviation Act specifically sets, for example, as a policy:

> "[T]he placement of maximum reliance on competitive market forces in an actual and potential competition (A) to provide the needed air transportation system, and (B) to encourage sufficient and well-managed carriers to earn adequate profits and attract capital."

Section 102(9) goes on to set as further policy:

> "[T]he encouragement, development, and maintenance of an air transportation system relying on actual and potential competition to provide efficiency, innovation, and low prices and to determine the variety, quality, and price of air transportation services."

In the same statutory enactment, Congress withdrew the Federal Government's authority over air carrier domestic routes effective January 1, 1983.

I would point only to one further section of the statute; namely, Section 307(a) which provides in relevant part that:

> "The Administrator is authorized and directed to develop plans for and formulate policy with respect to the use of navigable airspace; and assign by rule, regulations, or order the use of the navigable airspace under such terms, conditions, and limitations as he may deem necessary in order to ensure the safety of aircraft *and the efficient utilization of airspace.*" (Emphasis added).

In each of the cited statutory provisions, the emphasis is upon competition and on an efficient air transportation system. A buy/sell mechanism, in sharp contrast to the scheduling committees, meets each of those objectives. This is not to say that, like all markets, if left unrestrained by the antitrust laws, there could not be forces come into play that lead to inefficiencies and a lack of competition. However, the presumption must be that buy/sell will lead to more efficient utilization and a procompetitive air transportation system as contrasted to scheduling committees or any other administrative mechanism.

### E. NO ONE LIKES PAYING FOR SLOTS BUT PLACED IN THE CONTEXT OF THE AIRLINE INDUSTRY AS IT EXISTS TODAY, THE ISSUE OF BUY/SELL IS RECEIVING DISPROPORTIONATE CONCERN

The Subcommittee is no doubt aware that slots have sold for upwards of $350,000. While this is a substantial sum of money, it must be placed in context. Gates at some of these high density airports have a value in excess of $3.0 million per gate. Gates not slots have become a severe access constraint but one which the Congress has shown little inclination to intercede in. Indeed many of the same airport organizations which would seek to stop buy/sell actively lobbied against a change in the status quo for gates when the Carter Administration sought to address the gate issue through proposed amendments to the Airport and Airways Aid and Development Act. To give but one example of the relative scarcity of gates, Continental and New York Air have been attempting to obtain gate space at John F. Kennedy International Airport for approximately one year. Despite having slots, entry has been frustrated though it appears this problem is finally about to reach resolution.

The price of slots must also be viewed against the aircraft acquisition cost. A new 737-300 sells for approximately $24 million. Both the slot and the aircraft can be amortized over at least 15 years. Assuming a $350,000 acquisition cost, a 15 year life and a 140 seat aircraft, the cost of the slot adds 45 cents to the cost of a ticket.[1]

Opponents of buy/sell always put great emphasis upon the argument that buy/sell will result in a deterioration of service to mid-size communities. This argument overlooks the fact that scheduling committees have done nothing to foster service to mid-size communities. Compare the service at Washington National Airport in 1979 to the service offered today. There are 25 communities which had air carrier nonstop service in 1979 that do not have any air carrier service to Washington National Airport today. The simple fact is that scheduling committees do not and cannot protect service to mid-size communities. The scarcity of slots at the constrained airports constantly causes air carrier managements to assess the use of the slots and to devote their usage to the market to the markets evidencing the most public demand.

### E. CONCLUSION

The fact is that even if the Congress were to enact the pending legislation, slots would still be bought and sold. These transactions would occur either through a black market or mergers. No one to my knowledge has yet raised buy/sell objections to the People Express-Frontier and Northwest-Republic mergers, for example.

Rather than try to stop buy/sell, the Subcommittee should commend Secretary Dole for dealing with a difficult and complex issue that demanded action. However, the Subcommittee ought to follow the effect of buy/sell closely and should either the implementation be unsound or some of the forecast horribles take place, then the Subcommittee should act promptly to see that the problem is cured. In the meantime, the presumption should favor the free market.

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## STATEMENT OF THE ILLINOIS DEPARTMENT OF TRANSPORTATION

The Illinois Department of Transportation appreciates the opportunity to present its views to the Subcommittee on Senator Kassebaum's bill (S. 1966) to rescind the recent U.S. Department of Transportation rule implementing a "buy-sell" mechanism for allocating slots at high-density airports. In our view, the buy-sell concept is unwise, and will lead inevitably to increased concentration in the airline industry and deterioration of air service to smaller communities. Senator Kassebaum's bill, by contrast, would implement significant improvements in the existing slot allocation process in a manner that avoids the risks of the buy-sell approach. We therefore support Senator Kassebaum's bill and urge its passage.

The allocation of slots is of particular interest to Illinois because of the importance of Chicago's O'Hare Airport to the air service needs of the state. O'Hare is the primary airport hub for most of the state, as well as for surrounding Midwestern states—providing a vital link to the nation's air transportation system. Yet that link is fragile. O'Hare has been subject to slot constraints for many years, a situation that has adversely affected many communities in the region. Consequently, an equitable mechanism for allocating slots is imperative to the air service needs of Illinois, and to the nation's air transportation system as a whole.

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[1] $350,000 divided by 15 years = $23,333 per year divided by 365 days = $64 per day divided by 140 seats = 45 cents per slot as the allocable cost of the slot.

The Subcommittee's concern about the DOT buy-sell slot rule is both appropriate and welcome. In our comments to the Federal Aviation Administration in August 1984, and in our testimony before the House Subcommittee on Aviation in October 1985, we emphasized that the buy-sell concept—because of its potential implications for the air transportation system—was more appropriately a matter for Congress to decide:

> "These kinds of basic policy decisions about the future trend in the nation's air service—relating to shifts in service among communities, industry concentration, and competition—should be made by Congress, not through a rulemaking proceeding on the transfer of airline slots. The FAA's proposal is not a "neutral" solution, since it will have potentially far reaching implications on air services and carriers.
>
> "The preferable solution to the difficult slot problem is for the FAA to concentrate its energies on restoring the system to full capacity as quickly as possible." Comments of the Illinois DOT at p. 3, FAA Docket 24105."

The DOT rule is premised on the erroneous belief that the Airline Deregulation Act and the Federal Aviation Act "require DOT to rely . . . on market mechanisms" to allocate slots, and that "a market approach . . . is the only way to accomplish that mandate." 50 F.R. at 52185 (emphasis added). These claims misread the overall objectives of the Airline Deregulation Act and overlook the adverse public interest ramifications of the buy-sell approach.

The Airline Deregulation Act of 1978 was the product of a number of carefully balanced tradeoffs. On the one hand, the Deregulation Act removed the outmoded restrictions on airline entry and pricing, leaving these decisions to carrier management through "maximum reliance on competitive market forces." (Section 102(a)(4)). But on the other hand, Congress recognized that complete reliance on unrestrained competitive market forces might produce undesirable results, leading to undue concentration and deterioration of service to smaller communities. Congress therefore included as one of the policies of the Act:

> "The maintenance of a comprehensive and convenient system of continuous scheduled airline service for small communities and isolated areas, with direct Federal assistance where appropriate." (Section 102(a)(8)).

The policy statements of the Act also reflect Congress' concerns about encouraging a "variety of adequate, economic, efficient and low-priced air services" (Section 102(a)(3)), and avoiding "unreasonable industry concentration, excessive market domination, and monopoly power" within the airline industry (Section 102(a)(7)). These important policy concerns of Congress are directly relevant to the question of slot allocation procedures and, in our view, counterbalance the marketplace approach to slot allocations.

The buy-sell concept raises a number of troublesome implications that warrant critical scrutiny. It would bestow an unearned economic windfall on private incumbent airlines, transforming slots that are more properly a part of the public domain over airspace into valuable "property" rights. An even greater concern is that the creation of a commodity marketplace for slots will likely lead to greater concentration in the industry and deterioration in service to mid-size and smaller communities.

### A. THE BUY-SELL PROPOSAL WILL LIKELY LEAD TO INCREASED CONCENTRATION IN THE AIRLINE INDUSTRY

The primary concern of the Illinois DOT is with the effect of a buy-sell mechanism on service to smaller communities. However, we are not indifferent to the likely effect of increasing concentration in the airline industry. Large incumbent airlines serving the larger markets already hold significant natural economic advantages in the marketplace by virtue of their size, the nature of their markets, their hub systems that provide traffic feed for new operations, and their very position as established incumbent airlines. The buy-sell approach would create an additional but artificial advantage for these carriers—one conferred by federal regulation—that might act as an economic barrier to other carriers and communities desiring access to constrained airports, leading to greater concentration.

New or smaller airlines generally lack the financial resources of the larger established airlines. But even with equal financial resources, they would still be at an economic disadvantage in bidding for slots. First, the large established airlines have a significant "feed" advantage that lessens the economic risk of adding new flights, thereby enhancing their ability to bid for additional slots. Second, they are able to spread the cost of a slot over their larger traffic base, resulting in a lower effective "slot cost per passenger" than new or smaller airlines—especially those operating with smaller aircraft. Third, for the incumbent airlines that already hold a large base of free "grandfathered" slots, the cost of acquiring an additional slot can be spread over their base of existing slots, resulting in a much lower "average cost per slot" than the new or smaller airlines. Lacking these economies of scale, new and smaller carriers would be at a substantial competitive disadvantage in terms of the prices they would have to charge their passengers in order to recoup their slot investment.

The DOT sidesteps these real world considerations by adopting an idealized view of the slot marketplace. It assumes that "if another carrier could offer more valuable service, then the slot is worth more to that carrier than to the holding carrier." From this premise, DOT reasons that "the holding carrier can maximize profits only by selling the slot to another carrier offering more highly valued service." 50 F.R. at 52185–86. This simplistic reasoning ignores the incumbent's incentive to hold slots as a means of forestalling competitors from entering its markets. The value of a slot to an incumbent is not measured just by the profit it can earn from using the slot, but also by the risk that sale of the slot to a competitor will result in diversion of revenues to the competitor in the incumbent's markets.

In the same vein, DOT theorizes that:

> "An unrestricted market in slots will permit a new entrant to obtain marginally profitable slots from one carrier at a price which will allow the new entrant to compete in a market in which another carrier is maintaining a price above average cost."

Yet this assumes that the new entrant will be able to outbid the "other carrier" for that slot. As described above, the larger incumbent carrier will have a substantial economic advantage over the new entrant in the slot marketplace to outbid—and thereby preempt—the new entrant.

### B. THE BUY-SELL APPROACH WILL LEAD TO DETERIORATION OF SERVICE TO SMALLER COMMUNITIES

A number of airlines and state agencies, including the Illinois DOT, pointed out that the buy-sell rule "discriminates against smaller carriers or those carriers using smaller aircraft in secondary markets," and that the rule:

> "would result in a shift in service to longer haul, higher density markets served by large airplanes because the profit potential of a large airplane is always greater than that of a small airplane." 50 F.R. at 52185, 52186, citing USAir.

Rather than address these self-evident statements directly, DOT has dismissed them as "theoretical" concerns. Id. at 52186.

Yet in dismissing these real world concerns, DOT itself has had to resort to an unsupported theory. It hypothesizes that:

> "*If* a smaller carrier can obtain higher profitability from an additional operation than can a larger carrier, the smaller carrier should be able to offer a higher purchase price and obtain the slot, even if financing is required." 50 F.R. at 52185 (emphasis added).

That, of course, is a very big "if," particularly for carriers using smaller aircraft in secondary markets. The DOT has ignored the impact of aircraft size on the ability to compete for slots. Even within the range of commuter aircraft sizes, carriers serving smaller communities with 15-seat aircraft will find it difficult to match the profit potential of larger 50-seat aircraft operating in longer haul, higher density markets. They will consequently be hard pressed to outbid the larger operators. Over the longer term, the carriers using smaller aircraft will be forced to shift to larger aircraft and denser markets themselves, or to "sell out" their slots to the larger operators.

The economic pressure for smaller commuter airlines to "sell out" slots to larger carriers is not just conjecture. During a brief experience with the slot trade experiment in 1982, which lasted barely two months, there were several well-publicized instances where commuters made large transfers of slots to larger carriers for substantial sums of money. Even during the short duration of the experiment, there was a discernible shift of slots from commuter-type services to longer-haul services by larger carriers. If authorized on a permanent basis, the shifts would be much greater, with a general reduction in the number of commuter airlines and services to smaller communities.

The DOT claims that the buy-sell rule incorporates several built-in safeguards for small community air service. These purported "safeguards," however, are not meaningful.

### *1. The Alleged Protection For Essential Air Service*

According to DOT, the buy-sell rule would theoretically restrict the transfer of slots that are used for service to communities covered by the Essential Air Service Program under Section 419 of the Federal Aviation Act, and would permit the Secretary to assign slots for EAS purposes. Yet at its public hearing on January 21, 1986, the FAA acknowledged that these special protections for EAS slots would terminate in the event the Essential Air Service Program is terminated. Under the Airline Deregulation Act, the EAS program will expire in October 1988, unless extended by Congress. However, in its Fiscal 1987 budget proposal, DOT is proposing to terminate the EAS program effective October 1 of this year—thus eliminating any protection for small community slots under the buy-sell rule. This makes clear that DOT's avowed interest in the "protection and development of service to smaller communities" under the buy-sell rule is superficial.

If the EAS program does terminate, the existence of a buy-sell mechanism will exacerbate the demise of air service at EAS communities. The mechanism will add a substantial additional economic cost to the air service—specifically, the market value of the slot itself, which may exceed $100,000. Even communities that have been able to develop modestly self- sufficient air service may lose their service if they must also cover the added "marketplace" cost of the slot. Many smaller communities will have a difficult time in any event if the EAS program is terminated. Congress and the federal government must therefore take care to ensure that other actions, such as the buy-sell proposal, do not make things even more difficult.

### *2. The Ability of Communities To Buy Slots*

The other protection cited by DOT—that the rule allows communities to buy slots for their air service needs—is equally meaningless. Most smaller communities would not be able to afford the high cost of acquiring slots in the marketplace—a cost that would likely run into the hundreds of thousands of dollars for a two or three round-trip pattern of service. More importantly, this large investment is subject to forfeit under the "use or lose" provisions of the rule if the carrier terminates service and the community is unable to find a replacement carrier to start service within three weeks.[1] Finding a replacement carrier able to start service on such short notice would be an impossible task. The only way a community could protect its investment from forfeiture would be to contractually bind the leasing carrier to reimburse the cost of the slot in the event the carrier terminates service without replacement. Yet this would deter carriers from entering into such leasing and service arrangements in the first place.

## C. THE KASSEBAUM BILL WOULD IMPROVE THE SLOT ALLOCATION PROCESS WITHOUT THE RISKS INHERENT IN THE BUY-SELL APPROACH

As justification for its buy-sell rule, the DOT has cited two principal drawbacks of the existing airline scheduling committee system for allocating slots: first, that the air carrier scheduling committee agreements "contain no provisions for resolving deadlocks if agreement cannot be reached" among the carriers; and second, that the air carrier agreements "also have no use-or-lose provisions which would require the return of unused slots." 50 F.R. at 52181. Yet these are shortcomings that can be remedied directly and readily, without a radical overhaul of the system.

The Kassebaum bill would do just that. It fine tunes the slot allocation system with needed improvements, but avoids the dangers of increased industry concentration and deterioration of air service that are inherent in the buy-sell approach. The DOT has not demonstrated that buy-sell is the only way (or even the best way) to cure the "deadlock" and "use-or-lose" problems of the existing allocation system.

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[1] Under the "use or lose" provision, a slot is forfeited if not utilized 65 percent of the time over a two-month period. Thus, a three-week interruption during a two-month period would trigger forfeiture.

Moreover, the disruption that might be brought about by the buy-sell approach is irreversible. Once the "egg has been scrambled" under buy-sell, it will be too late to undo the damage. The only prudent course in these circumstances is to adopt the approach set forth in the Kassebaum bill.

### CONCLUSION

The buy-sell rule has serious, far-reaching implications on the structure of the nation's air transportation system. These implications were not contemplated by Congress in 1978 when it passed the Airline Deregulation Act, and they raise the risk of undermining some of the important goals of deregulation envisioned by Congress in that Act. Congress therefore has a special responsibility to take action to preserve those goals. The Kassebaum bill is an appropriate and necessary exercise of that responsibility, and should be passed.

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## STATEMENT OF ROBERT J. AARONSON, DIRECTOR OF AVIATION, THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY

The Port Authority of New York and New Jersey is responsible for the operation of John F. Kennedy International, Newark International and LaGuardia Airports. Last year these airports served almost 78 million passengers which represent over seven percent of all domestic passengers and about thirty percent of our nation's total overseas traffic.

On behalf of these millions of air travelers I would like to commend your efforts to take the Airport and Airways Trust Fund off-budget and we offer you our full support on this issue. We believe this is absolutely essential to assure full funding of authorized programs for airport and airway improvement and expansion so that we can solve the nation's air transportation capacity problems.

Let me assure you that the Port Authority is making every effort to provide our airport users with attractive, modern facilities. In order to achieve this we are planning a billion dollar Capital Improvement Program at Kennedy and LaGuardia Airports, and we are in the midst of a major program to expand facilities at Newark Airport.

However, until the FAA can provide the necessary airspace improvements and we can put the necessary groundside facilities in place to meet demand, restraints, such as the High Density Rule and its resulting quotas, must remain in place.

As you are well aware, the issue is how to equitably allocate the scarce resources which a "slot" represents. We have supported the airline scheduling committee system and have advocated an auction for a portion of available capacity as a deadlock breaking mechanism. While we applaud the proposed rule's use-it-or-lose-it provision (although carriers have raised a number of legitimate reasons to modify its application) we do not believe that sole reliance on a use-it-or-lose-it provision would provide more than very temporary relief for our capacity woes and would leave unresolved the larger issues of how to allocate scarce resources in an economically rational manner.

Our interest in auctions stems from the belief that auctions are an economically rational means of distributing a scarce resource as opposed to the lottery proposed by the Department of Transportation and accepted, in an expanded format, by Congressman Mineta. Under our proposal the auction proceeds would be divided into three equal parts for (1) the Airport and Airways Trust Fund, (2) the air carriers and (3) airport capacity enhancement.

We are troubled by the apparent permanent giving away of a scarce public resource under the proposed rule and believe the Department of Transportation should retain its ability to make adjustments. We are also concerned that the level of international schedules allowed at Kennedy Airport should reflect the extreme seasonality of the international markets; over the long run, however, international schedules should not be allowed to increase without limitation at the expense of domestic schedules. We believe the Congress should direct the Department of Transportation to continue to explore the possible implementation of our auction proposal or some modification thereof.

We are also troubled by the Department's decision to allow the unrestricted selling and/or trading of slots obtained without cost—the issue of "windfall profits." The Port Authority's proposal avoids the "windfall profit" debate by prohibiting the sale of so-called "grandfather" slots but permitting the buying/selling of auctioned slots. The buying and selling of auctioned slots would permit carriers to rationalize the results of the auctions and recoup the auction costs. Furthermore, we believe periodic public auctions would probably result in lower slot prices than those that would prevail in the private market. Also there would be an assured supply of slots for new entrants and existing carriers at the periodic auctions we have proposed which is not the case under the Department's rule. While we believe auctions would result in lower prices being paid than under DOT's proposed rule, we also believe that slot prices will be significantly reduced if there is a two-year time limit imposed on the Department's rule.

The Port Authority also prefers that the Department accept the placement of airline and commuter slots into a single pool which would ensure the most efficient use of the slots and would be more in conformity with the overall objectives of a deregulated system. We believe the Essential Air Services provisions of the rule and the rapidly expanding commuter/airline networks will assure an adequate level of service to smaller markets.

Madam Chairman, notwithstanding our preference for our own proposal and our disagreement with aspects of the proposed rule we did not object at the January 21 public hearing to the implementation of the Department of Transportation's rule provided that it be for a limited period such as two years. We did so because as strongly as we believe in the merits of our recommended solution we are equally convinced of the need to immediately put in place a mechanism that will address this long standing problem and extremely frustrating situation at our airports. By allowing the rule to be implemented it would provide a sufficient period of time to consider the inadequacies in the rule uncovered at the FAA hearing and heard in today's committee hearing, permit an evaluation of the Department's rule, realize improvements in system capacity that could alter the parameters of the issue and allow Congress to arrive at a consensus on the long term policy that should be implemented.

Finally, despite our objections we do not believe the Department's rule, if implemented, would seriously impinge upon our rights to operate Kennedy and LaGuardia Airports in an efficient and environmentally proper manner. Just as the current scheduling committees' allocation of an airspace slot does not confer any right of access to a gate or terminal space to the recipient air carrier, the purchase of a slot would confer only access to the runway, not to other airport facilities. Furthermore, we do not believe DOT's rule would prevent the Port Authority from imposing its own allocation methods, including an auction, for other scarce airport resources if circumstances required us to do so.

In conclusion, we believe the best solution to the debate is to provide adequate capacity and thus eliminate the need to allocate scarce resources. However, until this can be achieved, we believe it is important to temporarily resolve the issue by implementing the Department of Transportation's proposed rule with modifications for a 2-year period.

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## Statement of United Parcel Service Co.

### I. PERMITTING THE PURCHASE AND SALE OF SLOTS

UPS opposes the concept of buying and selling slots, except as an absolute last resort, and believes that the FAA's action is more drastic than is necessary at this time. It is not the function of government to create wealth and assets in the hands of incumbent carriers by allowing them to sell slots. Nor should the DOT by regulation revive airline economic regulation when Congress has specifically repealed it.

The concept of buying and selling slots is troublesome generally. Slots belong to the public, and should not belong to an airline or a bank. The determination of the public interest is the duty of the DOT, not the creation of wealth and assets.

The rationale given for the imposition of the buy-sell provision is that the Scheduling Committees have not worked. This implies an aversion to the buying and selling of slots and a feeling that if the Scheduling Committees were working, buy-sell would not be necessary. UPS shares this aversion and suggests that the FAA and DOT went further than was necessary in imposing the buy-sell solution to the slot allocation problem.

UPS urges that the FAA impose a use-or-lose requirement on the present Scheduling Committee system for a trial period, perhaps for six months or a year, and see if this requirement enables the Scheduling Committees to function. It may well be that the elimination of "pocket slots" will make enough extra slots available for the airlines to be able to allocate slots among themselves voluntarily. This is certainly preferable to a buy-sell regime. The DOT should not impose the buy-sell solution without first determining whether a less drastic solution will work.

If the imposition of use-or-lose on the Scheduling Committee system does not work, and the FAA does not impose a deadlock breaking lottery, UPS suggests that the FAA impose buy-sell at one airport, or possibly two airports, to see if it works there. Only after observing the results should the FAA consider extending the Rule to all high density airports. The FAA might consider, for instance, Washington National Airport as the initial airport at which to impose buy-sell because of the present deadlock there.

Any change in slot allocations as abrupt as that established in the buy-sell Rule should not be imposed without an opportunity to carefully evaluate its impact. UPS expects that the imposition of a use-or-lose requirement on the Scheduling Committee system may solve the problem and eliminate the need for buy-sell altogether.

It should also be recognized that as air traffic increases in the future, other airports will become slot constrained. The logical solution would be to inaugurate a Scheduling Committee system, or a Scheduling Committee with a use-or-lose and a lottery to break deadlocks, at such additional airports as the initial step and move to buy-sell only as a last resort when and if the committee systems break down. By doing this the Scheduling Committee system and personnel could be preserved for use at such airports in the future. The Reservation Center professional personnel have done an outstanding job through the years and their experience and talents should not be lost. Their talents can and should be preserved by continuing the Scheduling Committees at the airports where they are still working. In the event that the Scheduling Committee deadlocks, a lottery should be added to the committee enabling the committee to redistribute pocket slots etc. before going to buy-sell.

There is particularly no need to impose the buy-sell regime at the JFK airport because the Scheduling Committee has been and is presently functioning properly. For example, there are currently slots at JFK which no carrier has requested. At the recent meeting in Tampa, UPS requested a slot for just one day but FAA legal counsel ruled that slots could not be given out under the new regulation. Therefore there is presently no way that UPS can acquire the slot which it needs at JFK until April 1 or until a lottery is held. But for this Rule UPS would have had its slot and solved its problem.

Under the buy-sell Rule, carriers who have shown no interest in using the slots which are available at JFK are likely to enter the lottery in the hope that the slots can be sold to someone else. UPS may be forced to buy a slot from such a party even though that party has no interest in operating the slot and has acquired it solely for the purpose of selling it.

Thus the new regulation has injected a new form of government regulation into an area of private business practice which was coping successfully with the slot problem at JFK. This is directly contrary to the basic philosophy of the Airline Deregulation Act of 1978, which was designed to get the government out of the airline business, rather than to create new regulatory procedures. It also clearly violates the philosophy and the policy of the Reagan administration which is to avoid government action whenever and wherever the private sector can solve its problems adequately. Whatever action is taken with regard to the other airports, the buy-sell and lottery provisions should not be applied to JFK. It should be left to the Scheduling Committee.

## II. ELIGIBILITY FOR HOLDING SLOTS

The regulation, as presently written, permits anyone to hold a slot. This is a controversial provision, and there is some sentiment that only air carriers should be permitted to hold slots. The UPS position is that if eligibility is to be limited to air carriers as some parties may request, indirect air carriers of freight such as UPS should be permitted to hold slots. In particular, indirect air carriers should not be required to hold either a Part 121 or 135 certificate because they do not require such certificates to operate. Any legislation proposed by the Committee should also ensure that indirect air carriers of freight are permitted to hold slots.

One rationale for excluding non-air carriers is to prevent speculation which would drive up the price of slots. That rationale does not apply to an indirect air carrier such as UPS.

As an air carrier, albeit it an indirect air carrier, UPS, and the millions of shippers it serves, have a legitimate, direct and substantial interest in having access to high density airports. UPS owns a large fleet of cargo aircraft which are operated for it by various direct air carriers. UPS' present fleet consists of 6 B-747 aircraft, 29 DC-8-70 Series aircraft, 36 B-727 aircraft and 11 Fairchild Metro aircraft. UPS recently contracted to purchase 20 Boeing 757 aircraft and has options for 15 more. Additionally, UPS charters, on a regular basis, 140 aircraft owned by others.

Thus, UPS' interest in being able to obtain high density airport access is obvious. Since UPS frequently changes a particular operation at a given airport from one operator to another for business or operational reasons, UPS needs to be able to hold slots in its own name so that such changes can be made quickly without a great deal of meaningless and unnecessary paper shuffling.

Similarly, indirect air carriers such as UPS should be permitted to participate in the lottery for new slots. As the Rule is presently worded they are excluded from the lottery because they do not meet the requirement of having a Part 121 or 135 certificate. That provision should be eliminated as it applies to indirect air carriers of cargo.

In summary, any eligibility criteria for the holding of slots and participating in the lottery for new and unused slots should include indirect air carriers such as UPS. There is no reason to exclude UPS from being able to hold slots, and the FAA should not do so.

### III. THE "USE-OR-LOSE" PROVISION

UPS strongly supports this aspect of the FAA Rule and urges that any legislation contain such a provision. The holding of so-called "pocket" slots aggravates an already severe situation. Pocket slots leave available capacity with those who neither need it nor use it and prevents those who do need it and would use it from doing so. The withholding of unused, available air space at high density airports should not be permitted, and UPS urges the Senate Subcommittee on Aviation to urge the FAA to remain firm on this part of its Rule.

### CONCLUSION

In summary, UPS urges the Senate Subcommittee on Aviation to seek to ensure that indirect air carriers of freight such as UPS are eligible to hold slots and that the use-or-lose provisions are preserved. UPS further urges that the implementation of the buy-sell provisions of the Rule be delayed until it can be determined whether the Scheduling Committees can function with a use-or-lose provision and a lottery system.

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## STATEMENT OF THE CITY OF LOS ANGELES DEPARTMENT OF AIRPORTS

The city of Los Angeles, Department of Airports' Board of Commissioners adopted a statement and resolution (attached) on January 8, 1986, in response to the Federal Aviation Administration's (FAA) notice of proposed rulemaking on the airline slot allocation process. The statement and resolution were submitted as comments to the FAA for its January 21, 1986 public hearing.

The Board of Commissioners requested that the Department of Transportation/FAA affirmatively state in the rulemaking process that the final rule and NPRM do not and are not intended to "pre-empt the field" relative to airside slot allocation procedures at airports in the United States. Although Los Angeles International Airport has yet to be designated as a high density airport, the Board of Commissioners feel that such a determination could be made in the future, thereby raising the issue of the impact of the rule on Los Angeles' operations. The Board of Commissioners also requested that the Department of Transportation/FAA establish a two-year time limit (or other appropriate time period) for the slot allocation program to ensure that a thorough review of the procedures will be made after a working, in-place experience. In addition, the Board of Commissioners believes that the Department of Airports, as an airport proprietor, has the traditional right to adopt slot allocation and slot transfer programs and other similar types of restrictive programs for the purposes, among other things, to regulate, control, or limit:

1. Noise;
2. Ground traffic;
3. Terminal/gate usage;
4. Aircraft ground safety;
5. Air pollution;
6. Exposure to environmental and noise liability; and
7. Exposure to contractual liability.

The City of Los Angeles, Department of Airports and its Board of Commissioners is pleased to have the opportunity to submit its comments to the Aviation Subcommittee on this matter which is extremely important to all airport proprietors in the United States. We shall be pleased to provide such additional information on this subject as is deemed appropriate by your subcommittee.

**National Air Transportation Association,**
*Alexandria, VA, February 7, 1986.*

Hon. **Nancy Landon Kassebaum,**
*Chairman, Aviation Subcommittee, Committee on Commerce, Science, and Transportation, SH-428 Hart Senate Office Building, Washington, DC.*

**Dear Senator Kassebaum:** The National Air Transportation Association (NATA) represents the business interests of over 1200 air taxi and fixed base operator companies located on airports nationwide. Because of our vital interest on the subject of the sale of airport slots at high density airports, we are submitting our views for the record at this time.

NATA supports your efforts to prevent the enactment of the final rule issued by the Department of Transportation (DOT) on December 16, 1985 that allows the sale of slots. Your proposal, S. 1966, is a good starting point to address the complex issue of slot sales and airport capacity.

We are strongly opposed to any air carrier profiting from the sale of a scarce public resource. The ability to buy or sell a space, or slot, at an airport implies ownership and that concept troubles us deeply. It is simply not in the public interest to give a valuable resource to an air carrier, and then allow that, or any company or entity to profit from its sale.

The proposed "buy-sell" rule does nothing to alleviate the capacity problem at our nation's high density airports. At best it provides a seemingly simple way to extricate the Federal Aviation Administration (FAA) from the current method used for allocating scarce airport capacity. At worst, it could actually discourage capacity growth since incumbent carriers owning slots would not want additional slots to be made available to competitive carriers, and possibly lower the value of their own, already existing slots.

If, in the end, slots sales must be allowed, a much better and beneficial way to address capacity would be to use the revenue from their sale to enhance the capacity of the system. In this way, both the current allocation and the future availability of capacity would be addressed. Whatever type of method is used, we strongly concur with the "use it or lose it" approach in your bill.

Of greatest concern to NATA is general aviation's including on-demand air taxi operations, access to high density airports. We fear that by assigning a dollar value to slots, there will be more and more pressure to deny general aviation operating rights at the high density airports. As you know, general aviation operations are an integral part of the national transportation system and pay user taxes for its operation, maintenance and development. Therefore, general aviation should not be denied access to any part of the national system.

In summary, we oppose the sale of airport slots. However, if slot sales must take place, the revenues derived from their sale should be used to enhance capacity and not for the profit of air carriers. We ask that Congress protect the rights of the general aviation industry and to its historical share of access to high density airports. General aviation does not have schedules or slots, as such, but provisions have been made in the past to provide access for this important segment of the transportation system.

NATA is ready to work with you and Members of the Senate to maintain a fair and reasonable approach to allocating a scarce public resource.

Respectfully submitted,

**Lawrence L. Burian,** *President.*

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**Eastern Air Lines, Inc.,**
*Washington, DC, February 18, 1986.*

Hon. **Nancy Kassebaum,**
*Chairman, Aviation Subcommittee, Senate Committee on Commerce, Science, and Transportation, U.S. Senate, Washington, DC.*

**Dear Madam Chairman:** On February 6, 1986, the Aviation Subcommittee held hearings on the matter of efficient and equitable use of operating rights at the four High Density airports in the United States (LaGuardia, Kennedy, Washington National and Chicago O'Hare). These hearings followed the recent adoption by the DOT of a regulation which would permit the buy/sell concept to allocate slots at the four High Density Rule airports (see High Density Traffic Airports; Slot Allocation and Transfer Methods, Docket No. 24105; Amendment Nos. 11-28 and 93-49, 50 Federal Register 52180, December 20, 1985). Among the matters considered at the referenced hearing before the Aviation Subcommittee was a proposal to modify or change the DOT regulation (S.1966).

The purpose of this letter is to state the position of Eastern Air Lines, Inc. on the issues raised at the hearing before the Aviation Subcommittee and we ask that this letter be included as part of the record of the hearings.

Eastern operates at all four High Density Rule airports and operates its unique Air-Shuttle service between two of the four airports (LaGuardia and Washington National). Thus, Eastern has a vital and important interest in the issues concerning operating rights at the High Density airports.

Eastern supports the DOT regulation which would permit the marketplace to govern the allocation of resources (i.e. operating rights or "slots") at the High Density airports rather than permit these resources to be allocated by administrative regulation. The DOT regulation is an appropriate response to the need to substitute competitive market forces for necessarily arbitrary administrative action in governing access to airports controlled under the FAA's High Density Rule. Without disrupting the existing service patterns, it provides an instrument for competitive market entry/exit and removes the uncertainty inhibiting meaningful planning by the carriers. Eastern fully supports the essential elements of the regulation. We do not support the adoption of S. 1966 or other similar legislative proposals which would in essence continue the present unsatisfactory situation. Moreover, these legislative proposals have the potential to cause a substantial disruption of present service patterns and inflict serious economic penalties on incumbent carriers.

The DOT regulation which we support, with the buy/sell mechanism, will enable all carriers to expand at airports where they are now blocked by slot restraints. Further, the buy/sell mechanism will enable new entrant airlines the access they need to begin service at capacity-controlled airports.

One of the objections that is cited in opposition to the DOT regulation is the so-called "Windfall" issue. While incumbent carriers now have the use of slots at the High Density airports, it must be recognized that these carriers have made major commitments and investments in connection with the services provided today. This includes major airport construction projects at the High Density Rule airports. It would simply make no economic sense for the existing carriers to abandon these huge investments at the High Density airports on some notion of "Windfall" profits through the buy/sell mechanism.

Further, in response to the "Windfall" contention, the fact is that the incumbent carriers, such as Eastern, have already suffered the loss of significant services at the High Density airports under the present regime. As an example, in 1968 Eastern conducted 142 daily scheduled operations at Washington National Airport. In 1978 this was reduced to 136, and at present there are only 108 daily scheduled operations. The reductions have forced Eastern to discontinue nonstop service between Washington National Airport and numerous cities that it continues to serve. These include: Allentown-Bethlehem-Easton, Charleston, S.C., Columbia, Greensboro, Greenville-Spartanburg, Hartford/Springfield, Louisville, Newark, Philadelphia, Raleigh-Durham, Richmond, St. Louis, Syracuse and Wilkes-Barre/Scranton. Thus, the present and past policies have resulted in a severe erosion of Eastern's position as an incumbent carrier at a High Density airport such as Washington National. The DOT regulation with its marketplace solution would give Eastern the chance to recoup the services through the buy/sell mechanism that it has lost at Washington National and other High Density airports.

Finally, the ultimate answer to the "Windfall" contention is to support action at the High Density airports that will reduce the value of a "slot" to "zero". As a carrier that has been adversely affected by the High Density Rule, Eastern has strongly supported capacity enhancements at the four airports. Our primary position over the years has been that the solution to the problems at the High Density airports is action by the government to expand the capacity at those airports. If capacity is increased, the necessary result will be the reduction in value of "slots" and ultimately an end to the "Windfall" contention.

In summary, Eastern supports the DOT regulation which would permit the marketplace through the buy/sell mechanism to allocate resources at the High Density airports. We urge that the DOT regulation be given a reasonable period for operation to determine the results of a buy/sell regime. Further, we urge that no precipitous legislative action be taken to stop the implementation of the DOT regulation. We arleady know the harmful end results of administrative regulatory solutions such as those embodied in the legislative proposals that have been advanced to stop the DOT regulation before it is even given a fair chance to perform in the real world. Instead of more regulation, Eastern strongly urges that Congress permit the marketplace to decide matters of airport access in any capacity-controlled environment.

Sincerely,

A.R. Upshaw, Jr., *Vice President.*

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National Association of Counties,
*Washington, DC, February 24, 1986.*

Hon. Nancy Kassebaum,
*Chairman, Subcommittee on Aviation, 621 Dirksen Senate Office Building, Washington, DC.*

Dear Senator Kassebaum: The National Association of Counties opposes the recently issued Department of Transportation airport buy-sell slot final rule and we applaud your introduction of legislation to block that rule.

Approximately 18 per cent of of the 260 largest airports in the United States are county-owned. This rule and the precedent its sets could have a serious effect on service to a number of these airports and to the citizens and businesses in the counties where these airports are located. We ask that the National Association of Counties' resolution on Airport Slot Allocation Policies be included in the record of the Subcommittee's February 6, 1986 hearing on the buy-sell rule.

Thank you for your consideration in this matter.

Sincerely,

John Thomas, *Executive Director.*

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Airport Operators Council International,
*Washington, DC, March 11, 1986.*

Hon. Nancy Kassebaum,
*Chairman, Subcommittee on Aviation, Senate Commerce, Science, and Transportation Committee, 428 Senate Hart Office Building, Washington, DC.*

Dear Senator Kassebaum: It was a pleasure to appear before your Subcommittee at the February 6 hearing on the Department of Transportation's "buy/sell" slots rule. I again thank you for the opportunity to express AOCI's serious concerns regarding the rule and to outline AOCI's alternative proposal.

I would like to clarify officially for the hearing record any misunderstanding that may remain regarding the position of the Port Authority of New York and New Jersey on the DOT "buy/sell" rule.

At the request of the Port Authority of New York and New Jersey which operates Kennedy International and LaGuardia Airports, I want to make clear that, while the Port Authority has expressed openness to the DOT approach as a means of temporarily resolving the slot problem for a limited trial period, they clearly prefer the AOCI or Port Authority auction proposal and have urged DOT to give further consideration to the auction concept.

I hope that this clarifies the hearing record and I respectfully request that this letter be included in the written record of the hearing.

Sincerely yours,

J. Donald Reilly,
*Executive Director/Secretary General.*

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